

# **UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

1625 South 900 West • PO Box 30408 • Salt Lake City, UT 84130-0408 • (801) 977-6800 • Fax (801) 977-6889

[www.abc.utah.gov](http://www.abc.utah.gov)

## **“PRIVATE CLUB LIQUOR LICENSE” APPLICATION CHECKLIST**

The items below must be completed and submitted by the **10th of the month** or earlier, so that your application can be processed in a timely manner. Because there are a limited number of private club licenses available, you will be notified of the next monthly Utah Alcoholic Beverage Control Commission meeting when your application will be considered. We request that a representative attend the meeting to make a brief presentation.

- 1.\_\_\_\_Completed Application form (enclosed).
- 2.\_\_\_\_Ownership entity organizational papers for business:
  - a) if a corporation, submit a copy of the articles of incorporation;
  - b) if a partnership, submit a copy of the written agreement;
  - c) if a limited liability company, submit a copy of the articles of organization
- 3.\_\_\_\_Copy of club's bylaws and/or house rules.
- 4.\_\_\_\_Criminal history background check information (see application form).
- 5.\_\_\_\_Evidence of proximity to schools, churches, libraries, playgrounds and/or parks. See #19 on application.
- 6.\_\_\_\_Written consent from either city/town council or county commission, whichever is applicable. (form enclosed)
- 7.\_\_\_\_Copy of current local business license.
- 8.\_\_\_\_**\$10,000** cash or corporate surety bond. (form enclosed)
- 9.\_\_\_\_**Certificate** of insurance for public liability and liquor liability “dram shop” coverage (minimum coverage is \$500,000 per occurrence/\$1,000,000 in the aggregate).
- 10.\_\_\_\_Scaled floor plan (8-1/2" x 11") highlighting area(s) for sale, storage and consumption of alcohol.
- 11.\_\_\_\_**\$250** application fee (non-refundable).
- 12.\_\_\_\_**\$2,500** initial license fee (make checks payable to UDABC).
- 13.\_\_\_\_Club Classification (check only one): A. [ ] Country Club    B. [ ] Fraternal Club  
C. [ ] Dining Club (at least 50% gross sales in food)    D. [ ] Social Club
- 14.\_\_\_\_Evidence that the private club meets the requirements for the above classification.
- 15.\_\_\_\_Profit & loss statement for previous year (or projected profit and loss statement).
- 16.\_\_\_\_Copy of any food menu and posted price list for alcoholic beverages.

Enclosed are copies of Utah law and commission rules pertaining to private clubs, and a list of factors considered in the evaluation of license applications. If you have questions concerning these forms or the application process, please contact our Licensing and Compliance Division at (801)-977-6800.

# PRIVATE CLUB LIQUOR LICENSE

- Will the club operate a dance or concert hall that admits minors (either on the premises of the club, or an adjoining premises operated by the club)? \_\_\_\_\_

19. List any private or public schools, churches, public libraries, public playgrounds or parks located within 600' of your premises. See Utah Code Sections 32A-5-101(7)&(8) as to how proximity is determined and measured and for an explanation on variances.

Property	Address	Measured Distance

20. **Ownership:** Check appropriate box and provide the requested information in the spaces below.

( add additional sheets if necessary )

- [ ] Applicant is an **individual:** List below information for: (a) Individual  
(b) All Managers
- [ ] Applicant is a **partnership:** List below information for: (a) All Partners  
(b) All Managers
- [ ] Applicant is a **corporation:** List below information for: (a) Any Stockholders  
owning at least 20% of the  
corporation  
(b) All Corporate Officers and  
Directors  
(c) All Managers
- [ ] Applicant is a **limited liability company (LLC):**

List below information for: (a) Any members owning at  
least 20% of the  
company  
(b) All Managers

TITLE \_\_\_\_\_ NAME \_\_\_\_\_ HOME ADDRESS \_\_\_\_\_  
HOME PHONE # \_\_\_\_\_ DR LIC # \_\_\_\_\_ DOB \_\_\_\_\_ SS# \_\_\_\_\_ % OWNED \_\_\_\_\_

Are you a United States Citizen? \_\_\_\_\_ If no, must attach a copy of residency status.

TITLE \_\_\_\_\_ NAME \_\_\_\_\_ HOME ADDRESS \_\_\_\_\_  
HOME PHONE # \_\_\_\_\_ DR LIC # \_\_\_\_\_ DOB \_\_\_\_\_ SS# \_\_\_\_\_ % OWNED \_\_\_\_\_

Are you a United States Citizen? \_\_\_\_\_ If no, must attach a copy of residency status.

TITLE \_\_\_\_\_ NAME \_\_\_\_\_ HOME ADDRESS \_\_\_\_\_  
HOME PHONE # \_\_\_\_\_ DR LIC # \_\_\_\_\_ DOB \_\_\_\_\_ SS# \_\_\_\_\_ % OWNED \_\_\_\_\_

Are you a United States Citizen? \_\_\_\_\_ If no, must attach a copy of residency status.

TITLE \_\_\_\_\_ NAME \_\_\_\_\_ HOME ADDRESS \_\_\_\_\_  
HOME PHONE # \_\_\_\_\_ DR LIC # \_\_\_\_\_ DOB \_\_\_\_\_ SS# \_\_\_\_\_ % OWNED \_\_\_\_\_

Are you a United States Citizen? \_\_\_\_\_ If no, must attach a copy of residency status.

21. **Criminal History.** The Commission may not grant a private club license to any person who has been convicted of a felony under any federal or state law or any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages. The Commission may not grant a private club license to any person who has been convicted of any crime involving moral turpitude or, on two or more occasions within the last five years, has been convicted of driving under the influence of alcohol, any drug, or the combination of alcohol and any drug.

This proscription also applies to any officers, partners, managers, managing agents, directors, stockholders who hold at least 20% of the total issued and outstanding stock of an applicant corporation, members who own at least 20% of an applicant limited liability company and to any person employed to act in a supervisory or managerial capacity.

Please list *all criminal offenses other than minor traffic offenses* of which you or any of the above persons have ever been convicted:

NAME	CRIMINAL OFFENSE	DATE OF CONVICTION

**A criminal history background check must be furnished on each person listed in #6 and #20 above. This may be done as follows:**

**a. Utah residents:** If any person listed has been a **resident of Utah for at least two years**, he/she shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the Utah Bureau of Criminal Identification.

**b. Non Residents: Out of state residents or persons who have resided in Utah for less than two years** shall submit a fingerprint card to the DABC and consent to a fingerprint criminal background check by the **Federal Bureau of Investigation (F.B.I.)**.

**An informed consent and release of liability form is included with this application.**

**Fingerprint cards are available at law enforcement agencies.** You may download the fingerprint card at this web address: <http://www.fbi.gov/hq/cjisd/pdf/fpcardb.pdf>

Submit the form(s) to the DABC with a processing fee of:

- \$15.00 per card for BCI background checks, or
- \$34.25 per card for FBI background checks.

**In the case of an undue delay in the processing of an F.B.I. criminal background check, here are the rules and procedures for obtaining a third-party national background check:** An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

- 1). the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the F.B.I. criminal history background report(s);
- 2). the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in the application that would disqualify the applicant from applying for and holding the license, permit, or package agency;
- 3). the applicant has submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.
- 4). the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and
- 5). the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

**A suggested attestation/stipulation letter that satisfies the above requirements is enclosed.**

A third-party national criminal background check can be obtained by;

- searching the yellow pages under Background Screening
- searching the internet under Background Screening or Background Checks

Because the DABC is State Agency, we cannot recommend any one background screening service over another. It is your responsibility however, to obtain the most complete, nationwide, criminal history available for the application process.

22. Have you as an applicant, or any proprietor, partner, managing agent, director, officer, stockholder owning at least 20% corporation stock, or if a limited liability company, any member owning at least 20% of the company, had a state alcoholic beverage license, permit, or agency revoked within the last three years? \_\_\_\_\_ If so please explain:
- 
23. Applicant agrees to immediately notify the department of any change in the ownership entity, and understands that failure to do so may result in immediate suspension of the license.
24. By signing below, the applicant attests that:
- a) it operates a club where a variety of food is prepared and complete meals are served on the premises, and at all times when alcohol is sold, served and consumed.
- b) the club has a governing body consisting of three or more members of the club that holds regular meetings to review membership applications and conduct any other business required by the club's bylaws or house rules. The current members of the governing body are:
- |       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
- c) no member of the club or any of its officers, directors, or trustees is under 21 years of age.
- d) the club will not be used for permitting gambling or any other violation of law or ordinance.
- e) consent is granted to representatives of the Alcoholic Beverage Control Department, Commission, State Bureau of Investigation (Bureau of Alcoholic Beverage Law Enforcement), and other law enforcement agencies to be admitted immediately and permitted without hindrance or delay to inspect the entire premises and all records of the licensee.
- f) authorization is granted to the department to access to federal, state and local sales, payroll, income, and real and personal property tax information.
- g) he/she has read and will abide by the provisions of Title 32A, Utah Code, and all rules of the commission and directives of the Department of Alcoholic Beverage Control; and understands that failure to adhere thereto or to no longer possess the qualifications of a licensee may result in suspension or revocation of the liquor license and forfeiture of compliance bond.
- h) the applicant does not and will not discriminate against persons on the basis of race, color, sex, religion, ancestry, or national origin.
- i) the applicant is in compliance with all federal and state laws pertaining to the payment of taxes and contributions to unemployment and insurance funds. The following are tax identification numbers of the business.
- i. State Sales Tax #: \_\_\_\_\_
- ii. State Payroll Withholding Tax #: \_\_\_\_\_
- iii. State Dept. of Workforce Services #: \_\_\_\_\_
- iv. Federal Taxpayer Identification #: \_\_\_\_\_

25. The undersigned acknowledges that he/she has read and understands the statements made herein and that execution thereof is done voluntarily and by authorization of the club; and that any false statement made on this application or any other related document is a second degree felony.
26. The undersigned hereby makes application to the Utah Alcoholic Beverage Control Commission for a private club license and certifies that the information contained herein and attached hereto is true and correct.

Date\_\_\_\_\_

\_\_\_\_\_  
Applicant/Owner of Business

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name/Title

STATE OF: \_\_\_\_\_ COUNTY OF: \_\_\_\_\_

Subscribed & sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Notary Public

SEAL:

## **“PRIVATE CLUB LIQUOR LICENSE”**

### **LOCAL CONSENT**

Date: \_\_\_\_\_

Attn: DABC Licensing & Compliance Section

\_\_\_\_\_, [ ☐ ] City [ ☐ ] Town [ ☐ ] County

hereby grants its consent to the issuance of a private club liquor license to:

Business Name: \_\_\_\_\_

Applicant / Business Owner: \_\_\_\_\_

Location Address: \_\_\_\_\_

Pursuant to the provisions of Utah Code 32A-5, this license allows for the storage, sale and consumption of liquor on the premises. Furthermore, the applicant has met all ordinances and requirements relating to issuance of local business license(s).

[ ☐ ] *Check if applicable*

#### **LOCAL CONSENT FOR PROXIMITY VARIANCE**

In accordance with Utah Code 32A-5-101(7),(8)&(9), the local authority also grants consent to a variance regarding the proximity of this establishment relative to a public or private school, church, public library, public playground, or park.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Print Name / Title

**UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
PRIVATE CLUB LIQUOR LICENSE APPLICATION  
EVALUATION FACTORS**

The Alcoholic Beverage Control Department and Commission utilize factors for evaluating a private club liquor license application, including, but not limited to:

1. Location factors such as:
  - proximity to and density of other liquor outlets in the area,
  - traffic flow,
  - demographics,
  - population to be served,
  - proximity to any educational, religious and recreational facility such as public schools, nursery schools, infant day care centers, trade and technical schools, churches, public libraries, public playgrounds, and parks.
2. Physical characteristics such as:
  - condition of the premises,
  - square footage,
  - seating capacity,
  - parking availability.
3. Management experience:
  - familiarity with food and alcoholic beverage operations,
  - familiarity with financial record keeping,
  - management scheme employed by the club,
  - length of time in operation,
  - past compliance with alcoholic beverage laws and rules.
4. Nature or type of private club operation:
  - type of menu items offered and emphasized,
  - whether emphasis is on an adult clientele rather than minors,
  - days and hours of operation,
  - gross sales of food items,
  - reasonableness of the club's articles, bylaws, house rules, and conformity with the Act.
5. Public input.
6. If a Class C (dining club):
  - percentage of food sales
  - portion of square footage and seating capacity used for the dining area vs. bar area.
  - whether full meals are served including appetizers, main dishes and desserts.
  - Adequacy of on-premise culinary facilities.
  - Type of entertainment (if any).

**Note: Keep this sheet and refer to it for presentation before the DABC Commission.**



## INFORMED CONSENT AND RELEASE OF LIABILITY

PURPOSE: To determine, in accordance with Utah Code 32A-1-702 and 32A-1-703, if an applicant with the Department of Alcoholic Beverage Control has been:

- convicted of a felony under federal or state law;
- convicted of a violation of a federal law, state law, or local ordinance concerning the sale, manufacture, distribution, warehousing, or transportation of an alcoholic beverage;
- convicted of a crime involving moral turpitude;
- convicted on two or more occasions within the previous five years, driving under the influence of alcohol, a drug, or the combined influence of alcohol and a drug.

## RELEASE

I hereby authorize the Department of Alcoholic Beverage Control (DABC) to investigate my criminal history records to ascertain any and all information which may be pertinent to my qualifications as an applicant with the DABC. The release of any and all information is authorized whether it is of record or not, and I do hereby release all persons, firms, agencies, companies, groups or installations, whomsoever, from any damages of or resulting from, furnishing such information to the DABC. I further agree that a copy of this release will remain in my application file.

\_\_\_\_\_  
Name (please print; last, first, middle initial)

\_\_\_\_\_  
Formerly used last names (please print)

\_\_\_\_\_  
Applicant/ doing business as

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Date:** \_\_\_\_\_

**To whom it may concern:**

**I, \_\_\_\_\_, attest:**

- 1. That I have submitted to the DABC the necessary fingerprint card(s) required for the application and consented to the fingerprint criminal background check(s) by the F.B.I.**
- 2. That I am not aware of any criminal conviction that would disqualify me from applying for and holding a Utah Department of Alcoholic Beverage Control license or permit.**

**I stipulate that if an F.B.I. report shows a criminal conviction that would disqualify me from holding the license, permit, or package agency, I shall immediately surrender the license, permit, or package agency to the department.**

**I am enclosing a national criminal history background report from a third party background check reporting service.**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Name/Title**

**UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL**

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**“PRIVATE CLUB BOND”**

**BOND #** \_\_\_\_\_

**KNOW ALL PERSONS BY THESE PRESENTS:**

That **Principal**, \_\_\_\_\_, a private club liquor licensee, doing business as \_\_\_\_\_, and **Surety**, \_\_\_\_\_, a corporation organized and existing under the laws of the state of \_\_\_\_\_ and authorized to do business in Utah, are held and bound unto the Utah Department of Alcoholic Beverage Control in the sum of **\$10,000**, for which payment will be made, we hereby bind ourselves and our representatives, assigns, and successors firmly by these presents.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**THE CONDITION OF THIS OBLIGATION IS SUCH THAT:**

WHEREAS, the above principal has made application to the Utah Alcoholic Beverage Control Commission for a private club liquor license pursuant to the provisions of 32A-5, Utah Code.

NOW, THEREFORE, if said principal, its officers, agents and employees shall faithfully comply with the provisions of Title 32A, Utah Code, and the rules and directives of the Utah Alcoholic Beverage Control Commission and the Utah Department of Alcoholic Beverage Control, then this bond shall be void; but, if said principal, its officers, agents and employees fail to comply with the provisions of the laws, rules and directives or orders as the commission or department may issue, then this bond shall be in full force and effect and payable to the Utah Department of Alcoholic Beverage Control. This bond shall run for a continuing term effective \_\_\_\_\_ unless canceled by service of written notice upon the Utah Department of Alcoholic Beverage Control, which cancellation shall be effective 30 days after receipt of such notice; provided however, that no part of this bond shall be withdrawn or canceled while violations, legal actions or proceedings are pending against said licensee / principal.

\_\_\_\_\_  
**Surety**

\_\_\_\_\_  
**Principal / Licensee**

\_\_\_\_\_  
Attorney in fact

\_\_\_\_\_  
Authorized signature

*{ Corporate Seal }*

\_\_\_\_\_  
Name / Title

## **STATUTORY AFFIDAVIT FOR CORPORATE SURETY**

STATE OF: \_\_\_\_\_

COUNTY OF: \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared before me, \_\_\_\_\_, who, being by me duly sworn, did say that he / she is the attorney in fact of \_\_\_\_\_, **Surety**, and that said instrument was signed in behalf of said surety by authority, and acknowledged to me that he / she as such attorney in fact executed the same.

\_\_\_\_\_  
**Notary Public Signature & Seal**

**Note:** *Corporate surety's own affidavit also acceptable*

## Sales Tax Information for Liquor License Holders

The prices of liquor, wine, and heavy beer at the liquor stores and package agencies do not include sales tax. The sales tax will be added at the cash register when members of the general public shop in a liquor store or package agency and bring their purchases to the cash register. License holders (licensees) that make purchases at the cash register will be charged sales tax just like the general public.

Licensees may purchase liquor from the department without paying the sales tax under these two conditions:

1. The licensee must file tax commission form TC-721 with the DABC. A copy of this form is included in this application packet. Once filed, the licensee can buy liquor, wine, and heavy beer exempt from sales tax at any DABC owned and operated state liquor store. If the licensee buys from a local package agency that is a “contracted store” (not owned or operated by the DABC), the licensee has to file form TC-721 with the package agency in order to be able to purchase “sales tax exempt”; *and*
2. The licensee must adhere to the liquor order procedures established by the DABC commission as follows:
  - (a) Commission rule requires that orders must be placed in advance to allow department personnel sufficient time to assemble the order. The order shall include the business name of the licensee, department permit number, and list the products ordered specifying each product by code number and quantity. The order may be telephoned or faxed to the store or agency.
  - (b) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check, cashier’s check, or debit card with a PIN.
  - (c) The licensee or the licensee’s designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.
  - (d) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.



Utah State Tax Commission  
**Exemption Certificate**  
(Sales, Use, Tourism and Motor Vehicle Rental Tax)

**TC-721**  
Rev. 5/06

Name of business or institution claiming exemption (purchaser)		Telephone Number	
Street Address	City	State	ZIP Code
Authorized Signature	Name (please print)	Title	
Name of Seller or Supplier: <b>Department of Alcoholic Beverage Control</b>		Date	

The person signing this certificate **MUST** check the applicable box showing the basis for which the exemption is being claimed. Questions should be directed (preferably in writing) to Taxpayer Services, Utah State Tax Commission, 210 N 1950 W, Salt Lake City, UT 84134. Telephone (801) 297-2200, or toll free 1-800-662-4335.

**DO NOT SEND THIS CERTIFICATE TO THE TAX COMMISSION**  
Keep it with your records in case of an audit.

**Sales tax account numbers with an "H" prefix are not to be used for tax-free purchases for resale or re-lease.**

**RESALE OR RE-LEASE**

Sales Tax License No. \_\_\_\_\_

I certify I am a dealer in tangible personal property or services that is for resale or re-lease. If I use or consume any tangible personal property or services I purchase tax free for resale, or if my sales are of food, beverages, dairy products and similar confections dispensed from vending machines (see Rule R865-19S-74), I will report and pay sales tax on the proper cost thereof directly to the Tax Commission on my next regular sales and use tax return.

**COMMERCIAL AIRLINES**

I certify the food and beverages purchased are by a commercial airline for in-flight consumption; or, any parts or equipment purchased are for use in aircraft operated by common carriers in interstate or foreign commerce.

**RELIGIOUS OR CHARITABLE INSTITUTION**

Sales Tax Exemption No. N \_\_\_\_\_

I certify the tangible personal property or services purchased will be used or consumed for essential religious or charitable purposes. This exemption can only be used on purchases totaling \$1,000 or more, unless the sale is pursuant to a contract between the seller and purchaser.

To be valid this certificate must be filled in completely, including a check mark in the proper box.

**A sales tax license number is required only where specifically indicated.**

Please sign, date and, if applicable, include your license or exemption number.

**NOTE TO SELLER:** Keep this certificate on file since it must be available for audit review.

**NOTE TO PURCHASER:** Keep a copy of this certificate for your records. You are responsible to notify the seller of cancellation, modification, or limitation of the exemption you have claimed.

**DO NOT SEND THIS CERTIFICATE TO THE TAX COMMISSION**

# UTAH DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

P.O. Box 30408 • Salt Lake City, UT 84130-0408 • Ph: 801-977-6800 • Fax: 801-977-6889  
website: [www.abc.utah.gov](http://www.abc.utah.gov)

## Private Club Liquor License Summary

*Note: This is general information only and should not be considered conclusive.  
For further detail, please consult Title 32A of the Utah Code or the Rules of the Commission.*

A private club liquor license allows the sale, storage, service, and consumption of alcoholic beverages (liquor, wine, heavy beer, and beer) on the premises of a private club. Licenses run from July 1 to June 30. The total number of licenses allowed by law is one per 7,850 people in the state.

### There are four classes of private clubs

- Class A includes equity clubs such as country clubs.
- Class B includes mutual benefit associations that are organized under a lodge system such as fraternal or patriotic clubs.
- Class C includes qualified dining clubs that maintain at least 50% of their club business from the sale of food and have adequate culinary facilities to serve full meals.
- Class D includes any other club that does not qualify as a class A, B, or C club, such as a social drinking club that does less than 50% of its business from the sale of food.

### Club Structure

- Licenses may be issued to sole proprietors, partnerships, corporations, or limited liability companies.
- A club must have a governing body comprised of at least three members that holds regular meetings to approve memberships (and conducts any other business required by the club's bylaws or house rules).

### Membership Requirements

- Qualifications for membership are set in the club's bylaws or house rules, however a member must be an individual who is 21 years of age or older.
- *Membership Applications.* A club, in its discretion, may immediately admit an applicant and give him/her temporary membership privileges until the governing body of the club can meet to approve the membership (eliminates the 7-day waiting period). The applicant must pay an application fee which cannot be less than \$4 and the governing board must act on the application within 31 days. If the governing body approves the applicant, the \$4 application fee may be credited towards the membership dues. Note: Membership dues must still be at least \$1 per month or \$12.00 per year.
- A member's spouse is entitled to all rights and privileges of the member, except to the extent restricted by law (i.e. a spouse who is a minor, cannot be in a bar area, purchase or consume alcohol, etc.).
- A minor child of a member of a Class A club is entitled to all rights and privileges of the member to the extent permitted by the club's bylaws or house rules, except to the extent restricted by law (i.e. cannot be in a bar area, purchase or consume alcohol, etc.).
- A patron, in order to be admitted to or use the premises of a private club, and/or purchase alcoholic beverages at a private club, must be a club member, holder of a visitor card, or guest of a member or visitor card holder.
- *Membership Exceptions.* Non patrons such as employees, independent contractors, and entertainers may be on the club premises to perform their duties without having to be a club member, holder of a visitor card, or guest of a member or visitor card holder.

### Visitor Cards

- Non members, at the discretion of a club, may purchase a **visitor card** for not less than \$4.
- The visitor card is good for up to three weeks
- No sponsorship is required.
- The visitor card holder may host up to seven guests.

- Minors may not be issued a visitor card.
- The entire amount of the visitor card fee is retained by the club.

### **Guest Hosting**

- Guests must be
  - previously authorized by a member or holder of a visitor card (host);
  - known by the host based on a pre-existing bona fide business or personal relationship prior to the guest's admittance to the club;
  - accompanied by the host for the duration of the guest's visit, and enjoy only those privileges derived from the host for the duration of the guest's visit.
- The host must
  - remain on the club premises for the duration of the guest's visit; and
  - be responsible for the cost of all services extended to the guest.
- On duty employees may not
  - act as a host for a guest, or
  - attempt to locate a host for a guest with whom the host has no acquaintance based on a pre-existing bona fide business or personal relationship.
- The club and its employees may not enter into an agreement or arrangement with a member or visitor card holder to indiscriminately host members of the general public into the club as guests.
- If a guest is a member of the same fraternal organization as the Class B club, previous authorization by a host is not required.

### **Sale and Service of Alcoholic Beverages:**

#### **(1) Liquor Sales**

- (a) The primary liquor in a mixed drink may be dispensed from any size bottle, but only in quantities **not to exceed** 1.5 ounces through a department approved calibrated metered dispensing system or device. The club must post a list of types and brands of liquor dispensed through the dispensing system.
- (b) Liquor used as a secondary flavoring need not be dispensed through the dispensing system. Liquor stored and used as flavorings must be clearly labeled "flavoring".
- (c) The total amount of spirituous liquor in a beverage (including both the primary liquor and any secondary flavorings) may not exceed 2.5 ounces of spirituous liquor.
- (d) Each patron may have no more than a total of 2.5 ounces of spirituous liquor (including flavorings) at a time before the patron.

#### **(2) Wine Sales**

- (a) Wine may be sold and served by the bottle or container in sizes not exceeding 1.5 liters to tables of four or more. For tables of less than four, the size can not be larger than 750 ml.
- (b) Wine may be served by the glass or individual portion in quantities not exceeding 5 ounces. An individual portion (i.e. "flights") may be served to a patron in more than one glass as long as the total amount of wine in the individual portion does not exceed 5 ounces. An individual portion of wine is considered one alcoholic beverage.
- (c) Wine may be poured by the glass from any size bottle or container and need not be dispensed through a dispensing device.
- (d) Unfinished wine may be removed from a club by a patron if the bottle is recorked or recapped.

**(3) Heavy Beer Sales:** Heavy beer may be served in original containers not exceeding one liter.

**(4) Flavored Malt Beverage Sales:** Flavored malt beverages may be served in original containers not exceeding one liter.

**(5) Beer Sales:** Light beer may be served in any size container not exceeding 2 liters and on draft. Beer may be sold by the pitcher (up to two liters) to two or more patrons, but may be sold to an individual patron only in a container that does not exceed one liter. Beer may be sold to go in sealed containers.



**Limitation on Total Number of Drinks**

- Each club patron may have no more than two alcoholic beverages of any kind at a time before the patron subject to the following limitations:

If two spirituous drinks are in front of a patron, one may not be the same primary liquor dispensed as a shot-on-the-side (previously referred to as a “side car”). Also, the two drinks can not contain a total of more than 2.5 ounces of liquor at a time before the patron.

**Price List**

- A private club must have readily available for its patrons a printed alcoholic beverage price list or menu containing current prices of all alcoholic beverages.

**Discounting Practices Prohibited**

- Liquor may not be sold at a discount at any time.
- Discounting practices are prohibited that encourage over-consumption of alcohol (i.e. “happy hours”, “two for ones”, combination pricing, “all you can drink for a set price”, free alcohol, or selling at less than cost).
- A private club licensee or employee may not purchase an alcoholic beverage for a patron.

**“Brown Bagging”**

- Patrons may not bring in or store alcoholic beverages on the premises, however at the licensee’s discretion a patron may bring in bottled wine for consumption on the premises.
- Wine brought in must be immediately delivered to a server or an employee of the club.
- A wine service may then be performed, and patrons may serve themselves or others at the table.

**Food Availability**

- Clubs must offer a variety of food prepared and served in connection with dining accommodations.
- Food must be available at all times when alcohol is sold, served, or consumed.

**Advertising**

- Any advertising by a club, its employees, or persons under contract with the club (i.e. entertainers), must include the phrase, “a private club for members” to clearly identify the establishment as being a private club.
- Signs advertising the availability of alcoholic beverages may be displayed inside and outside the club.
- Alcohol advertising by the club must comply with the guidelines in Rule R81-1-17.

**Advertising and Promotion of Memberships and Visitor Cards**

- Clubs may advertise the availability and price of memberships and visitor cards.
- A private club, its employees, agents, members, or any person under contract or agreement with the club may not directly or indirectly engage in or participate in any public advertising or promotional scheme that:
  - (1) offers or provides complimentary club memberships or visitor cards to the general public;
  - (2) offers or provides full or partial payment of membership fees or dues, or visitor card fees to members of the general public;
  - (3) offers or implies an entitlement to a club membership or visitor card to members of the general public; or
  - (4) offers to host members of the general public into the club.
- However, a hotel that has a private club located in the hotel may assist the club in the issuance of a club membership or visitor card to a guest of the hotel under the following conditions:
  - (1) the guest has booked a room and is staying at the hotel;
  - (2) the costs of the membership application fee and membership dues or visitor card fee are paid for by the guest either as a separate charge, or as part of the hotel room rate;
  - (3) the private club receives payment for fees and dues for all memberships and fees for visitor cards issued to guests of the hotel;
  - (4) the hotel and the club shall maintain a current record of each membership or visitor card issued to a guest of the hotel as required by the commission which shall be available for inspection by the Department of Alcoholic Beverage Control; and
  - (5) the issuance of a membership or visitor card is done in accordance with the procedures outlined in 32A-5-107 (1) through (4) and (6).

## **Sales and Consumption Hours**

- Alcoholic beverages may be sold on any day from 10:00 a.m. until 1:00 a.m.
- A patron may not remove an open container primarily used for drinking purposes and containing an alcoholic beverage, from the club premises.
- Clubs must remain open an extra hour after alcohol sales and service have ended to allow a patron to finish consuming any single drink purchased before sales ended. Clubs do not have to remain open after all patrons have vacated the premises, or during an emergency.
- *Hours of Consumption.* Consumption of alcohol in clubs is prohibited between the hours of 2 a.m. and 10 a.m.
- The liquor storage area must remain locked at times when liquor sales are not permitted.

## **Employees**

- Any employee handling alcoholic beverages must be twenty one years of age or older.
- Servers of alcohol must wear a unique identification badge showing the employee's first name, initials, or a number assigned by the employer.
- Employees may not consume or be under the influence of alcoholic beverages while on duty.
- Managers, supervisors, and employees who serve alcohol must take and pass an alcohol server training seminar every three years and must complete the training within 30 days of commencing employment.

## **Employee Fines**

- The commission is authorized to assess an administrative fine against an officer, employee, or agent of a licensee for a violation of the alcoholic beverage laws.

## **Minors**

- Minors *may not* be on the premises of a lounge or bar area of any club except in a Class D club when performing maintenance or cleaning services when the club is not open for business.
- Minors *may not* be on the premises of any club that provides sexually oriented adult entertainment.
- Minors **may** be employed by Class A, B, or C clubs, but may not work in any lounge or bar area, or sell, serve or handle alcoholic beverages.
- Minors **may** work at a cash register in a Class A or Class C club to ring up the sale of alcoholic beverages.

## **Minors in Class D Clubs**

- Minors *may not* be on the premises of Class D (social drinking) clubs *except* under the following three exceptions:
  - 1) To dine or attend a function if all three of these conditions are met:
    - a) when no alcohol is sold, served, or consumed, but no later than 1 p.m.; and
    - b) when accompanied at all times by a parent, legal guardian, or spouse who is a member of the club or holder of a visitor card; and
    - c) the club has a full kitchen and is licensed by the local jurisdiction as a food service provider.
  - 2) Minors *may not* be an employee of a class D club *except* under either of the following circumstances:
    - a) The minor's parent or legal guardian owns or operates the club, provided that the minor is not employed to work in the lounge or bar area; or
    - b) The minor performs maintenance and cleaning services during hours when the club is not open for business (allows cleaning of the lounge and bar area).
  - 3) Minors *may* be on the premises of a Class D Dance or Concert hall under the following circumstances:
    - A minor who is at least 18 years old may be on the premises of a dance or concert hall if:
      - a) the dance or concert hall is on the premises of a class D club and the minor is the guest of a member or guest of a holder of a visitor card; or on adjoining premises operated by the Class D club; and
      - b) the commission has issued the club a "dance or concert hall minor permit" (see below).
    - A minor who is under 18 years old may be on the premises of a concert hall only (not a dance hall) if:

- a) accompanied by a parent or legal guardian who is a member or holds a visitor card;
- b) the concert hall is on the premises of a class D club or on adjoining premises operated by the Class D club;
- c) all alcoholic beverage product, signage, and dispensing equipment is not visible to the minor; and
- d) the commission has issued a “dance or concert hall minor permit” (see below).
- A minor who is under 18 years old and 14 years of age or older and *not* accompanied by a parent or guardian, may be on the premises of a concert hall only (not a dance hall) if:
  - a) the commission has issued a “dance or concert hall minor permit” (see below);
  - b) all alcoholic beverage product, signage, and dispensing equipment is not visible to the minor; and
  - c) there is no alcoholic beverage sales, service, or consumption on the premises of the class D club.
- Local governments may be more restrictive of a minor’s admittance, use of, or presence on the premises of any private club.

### **Dance or concert hall minor permit**

- The commission may issue a dance or concert hall minor permit to a class D club if all of the following conditions are met:
  - 1) the lounge, bar, and alcohol consumption area is:
    - not accessible to minors
    - clearly defined
    - separated by walls, multiple floor levels, or other substantial physical barriers;
  - 2) the bar or dispensing area is not visible to minors;
  - 3) no consumption of alcohol is allowed in the dance or concert hall area or any area of the club accessible to a minor;
  - 4) the club has sufficient security personnel to prevent the passing of beverages from the bar/lounge/consumption area to the dance or concert hall or any area accessible to minors; and
  - 5) there are separate entrances, exits, and restrooms for the dance or concert hall or any area of the club accessible to a minor.
- The permit may be suspended or revoked by the commission for failure to follow the permit guidelines, or for serving a minor, drug activities, lewd acts, etc.

### **Warning Sign**

- Each club licensee shall display, in a prominent place, a sign in at least half inch bold letters stating: “Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah.”

### **Bad Checks**

- The DABC may immediately suspend the license if it receives a bad check as payment for liquor, for licensing or bond fees, fines and costs for violations, etc..

### **Prohibited Conduct**

- Lewd acts, attire, and sexually oriented conduct of employees and entertainers that are considered contrary to public welfare and morals are prohibited on the premises.

### **Gambling**

- Clubs may not engage in or permit any form of gambling on its premises.

# TITLE 32A- ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2008)

## Chapter 5 - Private Club Liquor Licenses

### 32A-5-101. Commission's power to license private clubs -- Limitations.

(1) Before a private club may sell or allow the consumption of alcoholic beverages on its premises, the private club shall first obtain a license from the commission as provided in this chapter.

(2) The commission may grant private club licenses to social clubs, recreational, athletic, or kindred associations that desire to maintain premises upon which alcoholic beverages may be stored, sold, served, and consumed.

(3) At the time the commission grants a private club license the commission shall designate whether the private club license qualifies as a class A, B, C, or D license as defined in Subsections (3)(a) through (d).

(a) A "class A licensee" is a private club licensee that:

(i) meets the requirements of this chapter;

(ii) owns, maintains, or operates a substantial recreational facility in conjunction with a club house such as:

(A) a golf course; or

(B) a tennis facility;

(iii) has at least 50% of the total membership having:

(A) full voting rights; and

(B) an equal share of the equity of the club; and

(iv) if there is more than one class of membership, has at least one class of membership that entitles each member in that class to:

(A) full voting rights; and

(B) an equal share of the equity of the club.

(b) A "class B licensee" is a private club licensee that:

(i) meets the requirements of this chapter;

(ii) has no capital stock;

(iii) exists solely for:

(A) the benefit of its members and their beneficiaries; and

(B) a lawful social, intellectual, educational, charitable, benevolent, moral, fraternal, patriotic, or religious purpose for the benefit of its members or the public, carried on through voluntary activity of its members in their local lodges;

(iv) has a representative form of government; and

(v) has a lodge system in which:

(A) there is a supreme governing body;

(B) subordinate to the supreme governing body are local lodges, however designated, into which individuals are admitted as members in accordance with the laws of the fraternal;

(C) the local lodges are required by the laws of the fraternal to hold regular meetings at least monthly; and

(D) the local lodges regularly engage in one or more programs involving member participation to implement the purposes of Subsection (3)(b)(iii).

(c) A "class C licensee" is a private club licensee that:

(i) meets the requirements of this chapter;

(ii) is a dining club, as determined by the commission in accordance with Subsection (4); and

(iii) maintains at least 50% of its total private club business from the sale of food, not

including:

(A) mix for alcoholic beverages; or

(B) service charges.

(d) A "class D licensee" is a private club licensee that:

(i) meets the requirements of this chapter; and

(ii) (A) does not meet the requirements of a class A, B, or C license; or

(B) seeks to qualify as a class D licensee.

(4) In determining whether an applicant is a dining club under Subsection (3)(c), the commission:

(a) shall determine whether the applicant maintains at least 50% of its total private club business from the sale of food, not including:

(i) mix for alcoholic beverages;

(ii) service charges; or

(iii) membership and visitor card fees; and

(b) may consider:

(i) the square footage and seating capacity of the applicant;

(ii) what portion of the square footage and seating capacity will be used for a dining area in comparison to the

portion that will be used as a bar area;

(iii) whether full meals including appetizers, main courses, and desserts are served;

(iv) whether the applicant will maintain adequate on-premise culinary facilities to prepare full meals, except an applicant that is located on the premise of a hotel or resort facility may use the culinary facilities of the hotel or resort facility;

(v) whether the entertainment provided at the club is suitable for minors; and

(vi) the club management's ability to manage and operate a dining club including:

(A) management experience;

(B) past dining club or restaurant management experience; and

(C) the type of management scheme employed by the private club.

(5) (a) A private club or any officer, director, managing agent, or employee of a private club may not store, sell, serve, or permit consumption of alcoholic beverages upon the premises of the club, under a permit issued by local authority or otherwise, unless a private club license is first issued by the commission.

(b) Violation of this Subsection (5) is a class B misdemeanor.

(6) (a) Subject to the other provisions of this Subsection (6), the commission may issue private club licenses at places and in numbers as the commission considers necessary.

(b) The total number of private club licenses may not at any time aggregate more than that number determined by dividing the population of the state by 7,850.

(c) For purposes of this Subsection (6), population shall be determined by:

(i) the most recent United States decennial or special census; or

(ii) another population determination made by the United States or state governments.

(d) (i) The commission may issue seasonal private club licenses to be established in areas the commission considers necessary.

(ii) A seasonal private club license shall be for a period of six consecutive months.

(iii) A private club license issued for operation during a summer time period is known as a "Seasonal A" private club license. The period of operation for a "Seasonal A" club license shall: (A) begin on May 1; and

(B) end on October 31.

(iv) A private club license issued for operation during a winter time period is known as a "Seasonal B" private club license. The period of operation for a "Seasonal B" club license shall:

(A) begin on November 1; and

(B) end on April 30.

(v) In determining the number of private club licenses that the commission may issue under this section:

(A) a seasonal private club license is counted as 1/2 of one private club license; and

(B) each "Seasonal A" license shall be paired with a "Seasonal B" license.

(e) (i) If the location, design, and construction of a hotel may require more than one private club location within the hotel to serve the public convenience, the commission may authorize as many as three private club locations within the hotel under one license if:

(A) the hotel has a minimum of 150 guest rooms; and

(B) all locations under the license are:

(I) within the same hotel facility; and

(II) on premises which are managed or operated and owned or leased by the licensee.

(ii) A facility other than a hotel may not have more than one private club location under a single private club license.

(7) (a) Except as provided in Subsection (7)(b), (c), or (d), the premises of a private club license may not be established:

(i) within 600 feet of a community location, as measured by the method in Subsection (7)(e); or

(ii) within 200 feet of a community location, measured in a straight line from the nearest entrance of the proposed outlet to the nearest property boundary of the community location.

(b) With respect to the establishment of a private club license, the commission may authorize a variance to reduce the proximity requirement of Subsection (7)(a)(i) if:

(i) the local authority grants its written consent to the variance;

(ii) the commission finds that alternative locations for establishing a private club license in the community are limited;

(iii) a public hearing is held in the city, town, or county, and where practical in the neighborhood concerned;

(iv) after giving full consideration to all of the attending circumstances and the policies stated in Subsections **32A-1-104**(3) and (4), the commission determines that establishing the license would not be detrimental to the public health, peace, safety, and welfare of the community; and

(v) (A) the community location governing authority gives its written consent to the variance; or

(B) when written consent is not given by the community location governing authority, the commission finds that the applicant has established that:

(I) there is substantial unmet public demand to consume alcohol in a public setting within the geographic boundary of the local authority in which the private club licensee is to be located;

(II) there is no reasonably viable alternative for satisfying substantial unmet demand described in Subsection (7)(b)(v)(B)(I) other than through the establishment of a private club licensee; and

(III) there is no reasonably viable alternative location within the geographic boundary of the local authority in which the private club licensee is to be located for establishing a private club license to satisfy the unmet demand described in Subsection (7)(b)(v)(B)(I).

(c) With respect to the establishment of a private club license, the commission may authorize a variance that reduces the proximity requirement of Subsection (7)(a)(ii) if:

(i) the community location at issue is:

(A) a public library; or

(B) a public park;

(ii) the local authority grants its written consent to the variance;

(iii) the commission finds that alternative locations for establishing a private club license in the community are limited;

(iv) a public hearing is held in the city, town, or county, and where practical in the neighborhood concerned;

(v) after giving full consideration to all of the attending circumstances and the policies stated in Subsections **32A-1-104**(3) and (4), the commission determines that establishing the private club license would not be detrimental to the public health, peace, safety, and welfare of the community; and

(vi) (A) the community location governing authority gives its written consent to the variance; or

(B) when written consent is not given by the community location governing authority, the commission finds that the applicant has established that:

(I) there is substantial unmet public demand to consume alcohol in a public setting within the geographic boundary of the local authority in which the private club licensee is to be located;

(II) there is no reasonably viable alternative for satisfying substantial unmet demand described in Subsection (7)(c)(vi)(B)(I) other than through the establishment of a private club license; and

(III) there is no reasonably viable alternative location within the geographic boundary of the local authority in which the private club licensee is to be located for establishing a private club license to satisfy the unmet demand described in Subsection (7)(c)(vi)(B)(I).

(d) With respect to the premises of a private club license issued by the commission that undergoes a change of ownership, the commission may waive or vary the proximity requirements of Subsection (7)(a) in considering whether to grant a private club license to the new owner of the premises if:

(i) (A) the premises previously received a variance reducing the proximity requirement of Subsection (7)(a)(i); or

(B) the premises received a variance reducing the proximity requirement of Subsection (7)(a)(ii) on or before May 4, 2008; or

(ii) a variance from proximity requirements was otherwise allowed under this title.

(e) The 600 foot limitation described in Subsection (7)(a)(i) is measured from the nearest entrance of the outlet by following the shortest route of ordinary pedestrian travel to the property boundary of the community location.

(8) (a) Nothing in this section prevents the commission from considering the proximity of any educational, religious, and recreational facility, or any other relevant factor in reaching a decision on whether to issue a private club license.

(b) For purposes of this Subsection (8), "educational facility" includes:

(i) a nursery school;

(ii) infant day care center; and

(iii) a trade and technical school.

(9) If requested by a private club licensee, the commission may approve a change in the class of private club license in accordance with rules made by the commission.

### **32A-5-102. Application and renewal requirements.**

(1) A club seeking a class A, B, C, or D private club license under this chapter shall file a written application with the department in a form prescribed by the department. The application shall be accompanied by:

(a) a nonrefundable \$250 application fee;

(b) an initial license fee of \$2,500, which is refundable if a license is not granted;

(c) written consent of the local authority;

(d) a copy of the applicant's current business license;

(e) evidence of proximity to any community location, with proximity requirements being governed by Section

### **32A-5-101;**

(f) evidence that the applicant operates a club where a variety of food is prepared and served in connection with dining accommodations;

- (g) a bond as specified by Section **32A-5-106**;
  - (h) a floor plan of the club premises, including consumption areas and the area where the applicant proposes to keep and store liquor;
  - (i) evidence that the club is carrying public liability insurance in an amount and form satisfactory to the department;
  - (j) evidence that the club is carrying dramshop insurance coverage of at least \$500,000 per occurrence and \$1,000,000 in the aggregate;
  - (k) a copy of the club's bylaws or house rules, and any amendments to those documents, which shall be kept on file with the department at all times;
  - (l) a signed consent form stating that the club and its management will permit any authorized representative of the commission, department, or any law enforcement officer unrestricted right to enter the club premises;
  - (m) (i) a statement as to whether the private club is seeking to qualify as a class A, B, C, or D private club licensee; and
    - (ii) evidence that the private club meets the requirements for the classification for which the club is applying;
  - (n) in the case of a partnership, corporation, or limited liability company applicant, proper verification evidencing that the person or persons signing the private club application are authorized to so act on behalf of the partnership, corporation, or limited liability company; and
  - (o) any other information the commission or department may require.
- (2) (a) The commission may refuse to issue a license if the commission determines that any provisions of the club's bylaws or house rules, or amendments to those documents are not:

- (i) reasonable; and
- (ii) consistent with:
  - (A) the declared nature and purpose of the applicant; and
  - (B) the purposes of this chapter.
- (b) Club bylaws or house rules shall include provisions respecting the following:
  - (i) standards of eligibility for members;
  - (ii) limitation of members, consistent with the nature and purpose of the private club;
  - (iii) the period for which dues are paid, and the date upon which the period expires;
  - (iv) provisions for dropping members for the nonpayment of dues or other cause; and
  - (v) provisions for guests or visitors, if any, and for the issuance and use of visitor cards.

- (3) (a) All private club licenses expire on June 30 of each year.
- (b) A person desiring to renew that person's private club license shall submit by no later than May 31:
  - (i) a completed renewal application to the department; and
  - (ii) a renewal fee in the following amount:

Gross Cost of Liquor in Previous License Year for the Licensee	Renewal Fee
under \$10,000	\$1,000
equals or exceeds \$10,000 but less than \$25,000	\$1,250
equals or exceeds \$25,000 but less than \$75,000	\$1,750
equals or exceeds \$75,000	\$2,250

- (c) Failure to meet the renewal requirements shall result in an automatic forfeiture of the license effective on the date the existing license expires.
- (d) A renewal application shall be in a form as prescribed by the department.
- (4) To ensure compliance with Subsection **32A-5-107(40)**, the commission may suspend or revoke any private club license if the private club licensee does not immediately notify the department of any change in:
  - (a) ownership of the club;
  - (b) for a corporate owner, the:
    - (i) corporate officers or directors; or
    - (ii) shareholders holding at least 20% of the total issued and outstanding stock of the corporation; or
  - (c) for a limited liability company:
    - (i) managers; or
    - (ii) members owning at least 20% of the limited liability company.

**32A-5-103 (Superseded 07/01/09). Qualifications.**

- (1) (a) The commission may not grant a private club license to any person who has been convicted of:
  - (i) a felony under any federal or state law;
  - (ii) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;
  - (iii) any crime involving moral turpitude; or
  - (iv) on two or more occasions within the five years before the day on which the license is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug.

(b) In the case of a partnership, corporation, or limited liability company, the proscription under Subsection (1)(a) applies if any of the following has been convicted of any offense described in Subsection (1)(a):

- (i) a partner;
- (ii) a managing agent;
- (iii) a manager;
- (iv) an officer;
- (v) a director;
- (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation;

or

- (vii) a member who owns at least 20% of the applicant limited liability company.

(c) The proscription under Subsection (1)(a) applies if any person employed to act in a supervisory or managerial capacity for a private club has been convicted of any offense described in Subsection (1)(a).

(2) The commission may immediately suspend or revoke a private club license if after the day on which the private club license is granted, a person described in Subsection (1)(a), (b), or (c):

(a) is found to have been convicted of any offense described in Subsection (1)(a) prior to the license being granted; or

(b) on or after the day on which the license is granted:

- (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
- (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and

(B) was convicted of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug within five years before the day on which the person is convicted of the offense described in Subsection (2)(b)(ii)(A).

(3) The director may take emergency action by immediately suspending the operation of a private club license according to the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

(a) is arrested on a charge for any offense described in Subsection (1)(a)(i), (ii), or (iii); or

(b) (i) is arrested on a charge for the offense of driving under the influence of alcohol, any drug, or the combined influence of alcohol and any drug; and

(ii) was convicted of driving under the influence of alcohol, any drug, or the combined

influence of alcohol and any drug within five years before the day on which the person is arrested on a charge described in Subsection (3)(b)(i).

(4) (a) (i) The commission may not grant a private club license to any person who has had any type of license, agency, or permit issued under this title revoked within the last three years.

(ii) The commission may not grant a private club license to any applicant that is a partnership, corporation, or limited liability company if any partner, managing agent, manager, officer, director, stockholder who holds at least 20% of the total issued and outstanding stock of an applicant corporation, or member who owns at least 20% of an applicant limited liability company is or was:

(A) a partner or managing agent of any partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(B) a managing agent, officer, director, or a stockholder who holds or held at least 20% of the total issued and outstanding stock of any corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(C) a manager or member who owns or owned at least 20% of any limited liability company that had any type of license, agency, or permit issued under this title revoked within the last three years.

(b) An applicant that is a partnership, corporation, or limited liability company may not be granted a private club license if any of the following had any type of license, agency, or permit issued under this title revoked while acting in that person's individual capacity within the last three years:

(i) any partner or managing agent of the applicant partnership;

(ii) any managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) any manager or member who owned at least 20% of the applicant limited liability company.

(c) A person acting in an individual capacity may not be granted a private club license if that person was:

(i) a partner or managing agent of a partnership that had any type of license, agency, or permit issued under this title revoked within the last three years;

(ii) a managing agent, officer, director, or stockholder who held at least 20% of the total issued and outstanding stock of a corporation that had any type of license, agency, or permit issued under this title revoked within the last three years; or

(iii) a manager or member of a limited liability company who owned at least 20% of the limited liability company



that had any type of license, agency, or permit issued under this title revoked within the last three years.

(5) (a) A minor may not be granted a private club license.

(b) The commission may not grant a private club license to an applicant that is a partnership, corporation, or limited liability company if any of the following is a minor:

(i) a partner or managing agent of the applicant partnership;

(ii) a managing agent, officer, director, or stockholder who holds at least 20% of the total issued and outstanding stock of the applicant corporation; or

(iii) a manager or member who owns at least 20% of the applicant limited liability company. (6) If any person or entity to whom a license has been issued under this chapter no longer possesses the qualifications required by this title for obtaining that license, the commission may suspend or revoke that license.

#### **32A-5-104. Commission and department duties before granting licenses.**

(1) (a) Before a private club license may be granted by the commission, the department shall conduct an investigation and may hold public hearings for the purpose of gathering information and making recommendations to the commission as to whether or not a license should be granted.

(b) The department shall forward the information and recommendations described in Subsection (1)(a) to the commission to aid in the commission's determination.

(2) Before issuing a private club license, the commission shall:

(a) determine that:

(i) the applicant has complied with all basic qualifications and requirements for making application for a license as provided by Sections **32A-5-102** and **32A-5-103**; and

(ii) the application is complete;

(b) determine whether the applicant qualifies as a class A, B, C, or D private club licensee;

(c) consider the locality within which the proposed private club outlet is located including:

(i) physical characteristics such as:

(A) condition of the premises;

(B) square footage; and

(C) parking availability; and

(ii) operational factors such as:

(A) tourist traffic;

(B) proximity to and density of other state stores, package agencies, and licensed outlets;

(C) demographics;

(D) population to be served; and

(E) the extent of and proximity to any community location;

(d) consider the club management's ability to manage and operate a private club license, including:

(i) management experience;

(ii) past retail liquor experience; and

(iii) the type of management scheme employed by the private club;

(e) consider the nature or type of private club operation of the proposed liquor licensee, including:

(i) the type of menu items offered and emphasized;

(ii) the hours of operation;

(iii) the seating capacity of the facility; and

(iv) the gross sales of food items; and

(f) consider any other factor or circumstance the commission considers necessary.

#### **32A-5-105. UTAH NONPROFIT CORPORATION AND COOPERATIVE ASSOCIATION ACT APPLICABLE--EXCEPTIONS.** **[Repealed 2003]**

#### **32A-5-106. BOND.**

(1) Each private club liquor licensee shall post a cash or corporate surety bond in the penal sum of \$10,000 payable to the department, which the licensee has procured and must maintain for so long as the licensee continues to operate as a private club liquor licensee.

(2) The bond shall be in a form approved by the attorney general, conditioned upon the licensee's faithful compliance with this title and the rules of the commission.

(3) If the \$10,000 corporate surety bond is canceled due to the licensee's negligence, a \$300 reinstatement fee may be assessed. No part of any cash or corporate bond so posted may be withdrawn during the period the license is in effect, or while revocation proceedings are pending against the licensee. A bond filed by a licensee may be forfeited if the license is finally revoked.

### **32A-5-107. Operational restrictions.**

A club granted a private club license and the employees, management personnel, and members of the club shall comply with the following conditions and requirements. Failure to comply may result in a suspension or revocation of the private club license or other disciplinary action taken against individual employees or management personnel.

(1) A private club shall have a governing body that:

(a) consists of three or more members of the private club; and

(b) holds regular meetings to:

(i) review membership applications; and

(ii) conduct other business as required by the bylaws or house rules of the private club.

(2) (a) A private club may admit an individual as a member only on written application signed by the applicant, subject to:

(i) the applicant paying an application fee as required by Subsection (4); and

(ii) investigation, vote, and approval of a quorum of the governing body.

(b) (i) An admission of a member shall be recorded in the official minutes of a regular meeting of the governing body.

(ii) An application, whether approved or disapproved, shall be filed as a part of the official records of the private club licensee.

(c) Notwithstanding Subsection (2)(a), a private club, in its discretion, may admit an applicant and immediately accord the applicant temporary privileges of a member until the governing body completes its investigation and votes on the application, subject to the following conditions:

(i) the applicant shall:

(A) submit a written application; and

(B) pay the application fee required by Subsection (4);

(ii) the governing body votes on the application at its next meeting, which shall take place no later than 31 days following the day on which the application is submitted; and

(iii) the applicant's temporary membership privileges terminate if the governing body disapproves the application.

(d) The spouse of a member of any class of private club has the rights and privileges of the member:

(i) to the extent permitted by the bylaws or house rules of the private club; and

(ii) except to the extent restricted by this title.

(e) The minor child of a member of a class A private club has the rights and privileges of the member:

(i) to the extent permitted by the bylaws or house rules of the private club; and

(ii) except to the extent restricted by this title.

(3) (a) A private club shall maintain a current and complete membership record showing:

(i) the date of application of a proposed member;

(ii) a member's address;

(iii) the date the governing body approved a member's admission;

(iv) the date initiation fees and dues are assessed and paid; and

(v) the serial number of the membership card issued to a member.

(b) A current record shall be kept indicating when a member is dropped or resigns.

(4) (a) A private club shall establish in the private club bylaws or house rules application

fees and membership dues:

(i) as established by commission rules; and

(ii) that are collected from all members.

(b) An application fee:

(i) may not be less than \$4;

(ii) shall be paid when the applicant applies for membership; and

(iii) at the discretion of the private club, may be credited toward membership dues if the governing body approves the applicant as a member.

(5) (a) A private club may, in its discretion, allow an individual to be admitted to or use the private club premises as a guest only under the following conditions:

(i) a guest must be previously authorized by one of the following who agrees to host the guest into the private club:

(A) an active member of the private club; or

(B) a holder of a current visitor card;

(ii) a guest must be known by the guest's host based on a preexisting bonafide business or personal relationship with the host before the guest's admittance to the private club;

(iii) a guest must be accompanied by the guest's host for the duration of the guest's visit to the private club;

(iv) a guest's host must remain on the private club premises for the duration of the guest's visit to the private club;

- (v) a guest's host is responsible for the cost of services extended to the guest;
- (vi) a guest has only those privileges derived from the guest's host for the duration of the guest's visit to the private club;
- (vii) an employee of the private club, while on duty, may not act as a host for a guest;
- (viii) an employee of the private club, while on duty, may not attempt to locate a member or current visitor card holder to serve as a host for a guest with whom the member or visitor card holder has no acquaintance based on a preexisting bonafide business or personal relationship prior to the guest's arrival at the private club; and
- (ix) a private club or an employee of the private club may not enter into an agreement or arrangement with a club member or holder of a current visitor card to indiscriminately host a member of the general public into the private club as a guest.
- (b) Notwithstanding Subsection (5)(a), previous authorization is not required if:
  - (i) the private club licensee is a class B private club; and
  - (ii) the guest is a member of the same fraternal organization as the private club licensee.
- (6) A private club may, in its discretion, issue a visitor card to allow an individual to enter and use the private club premises on a temporary basis under the following conditions:
  - (a) a visitor card shall be issued for a period not to exceed three weeks;
  - (b) a fee of not less than \$4 shall be assessed for a visitor card that is issued;
  - (c) a visitor card may not be issued to a minor;
  - (d) a holder of a visitor card may not host more than seven guests at one time;
  - (e) a visitor card issued shall include:
    - (i) the visitor's full name and signature;
    - (ii) the date the visitor card is issued;
    - (iii) the date the visitor card expires;
    - (iv) the club's name; and
    - (v) the serial number of the visitor card; and
  - (f) (i) the private club shall maintain a current record of the issuance of a visitor card on the private club premises; and
    - (ii) the record described in Subsection (6)(f)(i) shall:
      - (A) be available for inspection by the department; and
      - (B) include:
        - (I) the name of the person to whom the visitor card is issued;
        - (II) the date the visitor card is issued;
        - (III) the date the visitor card expires; and
        - (IV) the serial number of the visitor card.
- (7) A private club may not sell an alcoholic beverage to or allow a patron to be admitted to or use the private club premises other than:
  - (a) a member;
  - (b) a visitor who holds a valid visitor card issued under Subsection (6); or
  - (c) a guest of:
    - (i) a member; or
    - (ii) a holder of a valid visitor card.
- (8) (a) A minor may not be:
  - (i) a member, officer, director, or trustee of a private club;
  - (ii) issued a visitor card;
  - (iii) admitted into, use, or be on the premises of a lounge or bar area, as defined by commission rule, of a private club except to the extent authorized under Subsection (8)(c)(ii);
  - (iv) admitted into, use, or be on the premises of a class D private club:
    - (A) that operates as a sexually oriented business as defined by local ordinance; or
    - (B) when a sexually oriented entertainer is performing on the premises; or
  - (v) admitted into, use, or be on the premises of a class D private club except to the extent authorized under Subsections (8)(b) through (g).
- (b) Except as provided in Subsection (8)(a)(iv), at the discretion of a class D private club, a minor may be admitted into, use, or be on the premises of a class D private club under the following circumstances:
  - (i) during a period when no alcoholic beverages are sold, served, otherwise furnished, or consumed on the premises, but in no event later than 1 p.m.;
  - (ii) when accompanied at all times by a member or holder of a current visitor card who is the minor's parent, legal guardian, or spouse; and
  - (iii) the private club has a full kitchen and is licensed by the local jurisdiction as a food service provider.
- (c) A class D private club may employ a minor on the premises of the private club if:

- (i) the parent or legal guardian of the minor owns or operates the class D private club; or
- (ii) the minor performs maintenance and cleaning services during the hours when the private club is not open for business.
- (d) (i) Subject to Subsection (8)(d)(ii), a minor who is at least 18 years of age may be admitted into, use, or be on the premises of a dance or concert hall if:
  - (A) the dance or concert hall is located:
    - (I) on the premises of a class D private club; or
    - (II) on the property that immediately adjoins the premises of and is operated by a class D private club; and
  - (B) the commission issues the class D private club a permit to operate a minor dance or concert hall based on the criteria described in Subsection (8)(d)(iii).
- (ii) If the dance or concert hall is located on the premises of a class D private club, a minor must be properly hosted in accordance with Subsection (5) by:
  - (A) a member; or
  - (B) a holder of a current visitor card.
- (iii) The commission may issue a minor dance or concert hall permit if:
  - (A) the private club's lounge, bar, and alcoholic beverage consumption area is:
    - (I) not accessible to a minor;
    - (II) clearly defined; and
    - (III) separated from the dance or concert hall area by one or more walls, multiple floor levels, or other substantial physical barriers;
  - (B) a bar or dispensing area is not visible to a minor;
  - (C) consumption of an alcoholic beverage may not occur in:
    - (I) the dance or concert hall area; or
    - (II) an area of the private club accessible to a minor;
  - (D) the private club maintains sufficient security personnel to prevent the passing of beverages from the private club's lounge, bar, or an alcoholic beverage consumption area to:
    - (I) the dance or concert hall area; or
    - (II) an area of the private club accessible to a minor;
  - (E) there are one or more separate entrances, exits, and restroom facilities from the private club's lounge, bar, and alcoholic beverage consumption areas than for:
    - (I) the dance or concert hall area; or
    - (II) an area accessible to a minor; and
  - (F) the private club complies with any other restrictions imposed by the commission by rule.
- (e) A minor under 18 years of age who is accompanied at all times by a parent or legal guardian who is a member or holder of a current visitor card may be admitted into, use, or be on the premises of a concert hall described in Subsection (8)(d)(i) if:
  - (i) the requirements of Subsection (8)(d) are met; and
  - (ii) signage, product, and dispensing equipment containing recognition of an alcoholic beverage is not visible to the minor.
- (f) A minor under 18 years of age but who is 14 years of age or older who is not accompanied by a parent or legal guardian may be admitted into, use, or be on the premises of a concert hall described in Subsection (8)(d)(i) if:
  - (i) the requirements of Subsections (8)(d) and (8)(e)(ii) are met; and
  - (ii) there is no alcoholic beverage, sales, service, or consumption on the premises of the class D private club.
- (g) The commission may suspend or revoke a minor dance or concert permit issued to a class D private club and suspend or revoke the license of the class D private club if:
  - (i) the private club fails to comply with the restrictions in Subsection (8)(d), (e), or (f);
  - (ii) the private club sells, serves, or otherwise furnishes an alcoholic beverage to a minor;
  - (iii) the private club licensee or a supervisory or managerial level employee of the private club licensee is convicted under Title 58, Chapter 37, Utah Controlled Substances Act, on the basis of an activity that occurs on:
    - (A) the licensed premises; or
    - (B) the dance or concert hall that is located on property that immediately adjoins the premises of and is operated by the class D private club;
  - (iv) there are three or more convictions of patrons of the private club under Title 58, Chapter 37, Utah Controlled Substances Act, based on activities that occur on:
    - (A) the licensed premises; or
    - (B) the dance or concert hall that is located on property that immediately adjoins the premises of and is operated by the class D private club;
  - (v) there is more than one conviction:
    - (A) of:
      - (I) the private club licensee;

- (II) an employee of the private club licensee;
- (III) an entertainer contracted by the private club licensee; or
- (IV) a patron of the private club licensee; and

(B) made on the basis of a lewd act or lewd entertainment prohibited by this title that occurs on:

- (I) the licensed premises; or
- (II) the dance or concert hall that is located on property that immediately adjoins the premises of and is operated by the class D private club; or

(vi) the commission finds acts or conduct contrary to the public welfare and morals involving lewd acts or lewd entertainment prohibited by this title that occurs on:

- (A) the licensed premises; or
- (B) the dance or concert hall that is located on property that immediately adjoins the premises of and is operated by the class D private club.

(h) Nothing in this Subsection (8) prohibits a class D private club from selling, serving, or otherwise furnishing an alcoholic beverage in a dance or concert area located on the private club premises on days and times when the private club does not allow a minor into those areas.

(i) Nothing in Subsections (8)(a) through (g) precludes a local authority from being more restrictive of a minor's admittance to, use of, or presence on the premises of a private club.

(9) (a) A private club shall maintain an expense ledger or record showing in detail all expenditures separated by payments for:

- (i) malt or brewed beverages;
- (ii) liquor;
- (iii) food;
- (iv) detailed payroll;
- (v) entertainment;
- (vi) rent;
- (vii) utilities;
- (viii) supplies; and
- (ix) other expenditures.

(b) A private club shall keep a record required by this Subsection (9):

- (i) in a form approved by the department; and
- (ii) balanced each month.

(c) An expenditure shall be supported by:

- (i) a delivery ticket;
- (ii) an invoice;
- (iii) a receipted bill;
- (iv) a canceled check;
- (v) a petty cash voucher; or
- (vi) other sustaining datum or memorandum.

(d) An invoice or receipted bill for the current calendar or fiscal year documenting a purchase made by the private club shall be maintained.

(10) (a) A private club shall maintain a minute book that is posted currently by the private club.

(b) The minute book required by this Subsection (10) shall contain the minutes of a regular or special meeting of the governing body.

(c) A private club shall maintain a membership list.

(11) (a) A private club shall maintain a current copy of the private club's current bylaws and current house rules.

(b) A change in the bylaws or house rules:

- (i) is not effective unless submitted to the department within ten days after adoption; and
- (ii) becomes effective 15 days after received by the department unless rejected by the department before the expiration of the 15-day period.

(12) A private club shall maintain accounting and other records and documents as the department may require.

(13) A private club or person acting for the private club, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes an entry in a book of account or other document of the private club licensee required to be made, maintained, or preserved by this title or the rules of the commission for the purpose of deceiving the commission, the department, or an official or employee of the commission or department, is subject to:

- (a) the suspension or revocation of the private club's license; and
- (b) possible criminal prosecution under Chapter 12, Criminal Offenses.

(14) (a) A private club licensee shall maintain and keep a record required by this section and a book, record, receipt, or disbursement maintained or used by the licensee, as the department requires, for a minimum period of three years.

(b) A record, book, receipt, or disbursement is subject to inspection by an authorized representative of the commission and the department.

(c) A private club licensee shall allow the department, through an auditor or examiner of the department, to audit the records of the private club licensee at times the department considers advisable.

(d) The department shall audit the records of the private club licensee at least once annually.

(15) A private club licensee shall own or lease premises suitable for the private club's activities.

(16) (a) A private club licensee may not maintain facilities in a manner that barricades or conceals the private club licensee's operation.

(b) A member of the commission, authorized department personnel, or a peace officer shall, upon presentation of credentials, be admitted immediately to the private club and permitted without hindrance or delay to inspect completely the entire private club premises and the books

and records of the private club licensee, at any time during which the private club licensee is open for the transaction of business to its members.

(17) Public advertising related to a private club licensee by the following shall clearly identify a private club as being "a private club for members":

(a) the private club licensee;

(b) an employee or agent of the private club licensee; or

(c) a person under a contract or agreement with the private club licensee.

(18) A private club licensee must have food available at all times when an alcoholic beverage is sold, served, or consumed on the premises.

(19) (a) Liquor may not be purchased by a private club licensee except from a state store or package agency.

(b) Liquor purchased from a state store or package agency may be transported by the private club licensee from the place of purchase to the licensed premises.

(c) Payment for liquor shall be made in accordance with rules established by the commission.

(20) A private club licensee may sell or provide a primary spirituous liquor only in a quantity not to exceed 1.5 ounces per beverage dispensed through a calibrated metered dispensing system approved by the department in accordance with commission rules adopted under this title, except that:

(a) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used as a secondary flavoring ingredient in a beverage subject to the following restrictions:

(i) the secondary ingredient may be dispensed only in conjunction with the purchase of a primary spirituous liquor;

(ii) the secondary ingredient may not be the only spirituous liquor in the beverage;

(iii) the private club licensee shall designate a location where flavorings are stored on the floor plan provided to the department; and

(iv) a flavoring container shall be plainly and conspicuously labeled "flavorings";

(b) spirituous liquor need not be dispensed through a calibrated metered dispensing system if used:

(i) as a flavoring on a dessert; and

(ii) in the preparation of a flaming food dish, drink, or dessert;

(c) a private club patron may have no more than 2.5 ounces of spirituous liquor at a time before the private club patron.

(d) a private club patron may have no more than two spirituous liquor drinks at a time before the private club patron, except that a private club patron may not have two spirituous liquor drinks before the private club patron if one of the spirituous liquor drinks consists only of the primary spirituous liquor for the other spirituous liquor drink.

(21) (a) (i) Wine may be sold and served by the glass or an individual portion not to exceed five ounces per glass or individual portion.

(ii) An individual portion may be served to a patron in more than one glass as long as the total amount of wine does not exceed five ounces.

(iii) An individual portion of wine is considered to be one alcoholic beverage under Subsection (25)(c).

(b) (i) Wine may be sold and served in a container not exceeding 1.5 liters at a price fixed by the commission to a table of four or more persons.

(ii) Wine may be sold and served in a container not exceeding 750 milliliters at a price fixed by the commission to a table of less than four persons.

(c) A wine service may be performed and a service charge assessed by the private club licensee as authorized by commission rule for wine purchased at the private club.

(22) (a) Heavy beer may be served in an original container not exceeding one liter at a price fixed by the commission.

(b) A flavored malt beverage may be served in an original container not exceeding one liter at a price fixed by the commission.

(c) A service charge may be assessed by the private club licensee for heavy beer or a flavored malt beverage

purchased at the private club.

(23) (a) (i) Subject to Subsection (23)(a)(ii), a private club licensee may sell beer for on-premise consumption:

(A) in an open container; and

(B) on draft.

(ii) Beer sold pursuant to Subsection (23)(a)(i) shall be in a size of container that does not exceed two liters, except that beer may not be sold to an individual patron in a size of container that exceeds one liter.

(b) (i) A private club licensee that sells beer pursuant to Subsection (23)(a):

(A) may do so without obtaining a separate on-premise beer retailer license from the commission; and

(B) shall comply with all appropriate operational restrictions under Chapter 10, Beer Retailer Licenses, that apply to an on-premise beer retailer except when those restrictions are inconsistent with or less restrictive than the operational restrictions under this chapter.

(ii) Failure to comply with the operational restrictions under Chapter 10, Beer Retailer Licenses, required by Subsection (23)(b)(i) may result in a suspension or revocation of the private club's:

(A) state liquor license; and

(B) alcoholic beverage license issued by the local authority.

(24) An alcoholic beverage may not be stored, served, or sold in a place other than as designated in the private club licensee's application, unless the private club licensee first applies for and receives approval from the department for a change of location within the private club.

(25) (a) A patron may only make an alcoholic beverage purchase in the private club from and be served by a person employed, designated, and trained by the private club licensee to sell, dispense, and serve an alcoholic beverage.

(b) Notwithstanding Subsection (25)(a), a patron who purchases bottled wine from an employee of the private club licensee or carries bottled wine onto the premises of the private club pursuant to Subsection (31) may thereafter serve wine from the bottle to the patron or others at the patron's table.

(c) A private club patron may have no more than two alcoholic beverages of any kind at a time before the private club patron, subject to the limitation of Subsection (20)(d).

(26) The liquor storage area shall remain locked at all times other than those hours and days when liquor sales and service are authorized by law.

(27) (a) Liquor may not be sold, offered for sale, served, or otherwise furnished at a private club on any day after 1 a.m. or before 10 a.m.

(b) The hours of beer sales and service are those specified in Chapter 10, Beer Retailer Licenses, for on-premise beer licenses.

(c) (i) Notwithstanding Subsections (27)(a) and (b), a private club shall remain open for one hour after the private club ceases the sale and service of an alcoholic beverage during which time a patron of the private club may finish consuming:

(A) a single drink containing spirituous liquor;

(B) a single serving of wine not exceeding five ounces;

(C) a single serving of heavy beer;

(D) a single serving of beer not exceeding 26 ounces; or

(E) a single serving of a flavored malt beverage.

(ii) A private club is not required to remain open:

(A) after all patrons have vacated the premises; or

(B) during an emergency.

(d) Between the hours of 2 a.m. and 10 a.m. on any day a private club licensee may not allow a patron to remain on the premises of the private club to consume an alcoholic beverage on the premises.

(28) An alcoholic beverage may not be sold, served, or otherwise furnished to a:

(a) minor;

(b) person actually, apparently, or obviously intoxicated;

(c) known habitual drunkard; or

(d) known interdicted person.

(29) (a) (i) Liquor may be sold only at a price fixed by the commission.

(ii) Liquor may not be sold at a discount price on any date or at any time.

(b) An alcoholic beverage may not be sold at less than the cost of the alcoholic beverage to the private club licensee.

(c) An alcoholic beverage may not be sold at a special or reduced price that encourages over consumption or intoxication.

(d) The price of a single serving of a primary spirituous liquor shall be the same whether served as a single drink or in conjunction with another alcoholic beverage.

(e) An alcoholic beverage may not be sold at a special or reduced price for only certain hours of the private

club's business day such as a "happy hour."

(f) More than one alcoholic beverage may not be sold or served for the price of a single alcoholic beverage.

(g) An indefinite or unlimited number of alcoholic beverages may not be sold or served during a set period for a fixed price.

(h) A private club licensee may not engage in a promotion involving or offering free alcoholic beverages to patrons of the private club.

(30) An alcoholic beverage may not be purchased for a patron of the private club licensee by:

(a) the private club licensee; or

(b) an employee or agent of the private club licensee.

(31) (a) A person may not bring onto the premises of a private club licensee an alcoholic beverage for on-premise consumption, except a person may bring, subject to the discretion of the licensee, bottled wine onto the premises of a private club licensee for on-premise consumption.

(b) Except bottled wine under Subsection (31)(a), a private club licensee or an officer,

manager, employee, or agent of a private club licensee may not allow:

(i) a person to bring onto the private club premises an alcoholic beverage for consumption on the private club premises; or

(ii) consumption of an alcoholic beverage described in Subsection (31)(b)(i) on the premises of the private club.

(c) If bottled wine is carried in by a patron, the patron shall deliver the wine to a server or other representative of the private club licensee upon entering the private club.

(d) A wine service may be performed and a service charge assessed by the private club licensee as authorized by commission rule for wine carried in by a patron.

(32) (a) Except as provided in Subsection (32)(b), a private club licensee or an employee of the private club licensee may not permit a patron of the private club to carry from the private club premises an open container that:

(i) is used primarily for drinking purposes; and

(ii) contains an alcoholic beverage.

(b) A patron may remove the unconsumed contents of a bottle of wine if before removal, the bottle is recorked or recapped.

(33) (a) A minor may not be employed by a class A, B, or C private club licensee to sell, dispense, or handle an alcoholic beverage.

(b) Notwithstanding Subsection (33)(a), a minor who is at least 16 years of age may be employed by a class A or C private club licensee to enter the sale at a cash register or other sales recording device.

(c) Except to the extent authorized in Subsection (8)(c), a minor may not be employed by or be on the premises of a class D private club.

(d) A minor may not be employed to work in a lounge or bar area of a class A, B, or C private club licensee.

(34) An employee of a private club licensee, while on duty, may not:

(a) consume an alcoholic beverage; or

(b) be intoxicated.

(35) A private club licensee shall have available on the premises for a patron to review at the time that the customer requests it, a written alcoholic beverage price list or a menu containing the price of an alcoholic beverage sold or served by the private club licensee including:

(a) a set-up charge;

(b) a service charge; or

(c) a chilling fee.

(36) A private club licensee shall display in a prominent place in the private club:

(a) the private club license that is issued by the department;

(b) a list of the types and brand names of liquor being served through its calibrated metered dispensing system; and

(c) a sign in large letters stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

(37) A private club licensee may not on the premises of the private club:

(a) engage in or permit any form of gambling, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling;

(b) have any video gaming device, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling; or

(c) engage in or permit a contest, game, gaming scheme, or gaming device that requires the risking of something of value for a return or for an outcome when the return or outcome is based upon an element of chance, excluding the playing of an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

(38) (a) A private club licensee may not close or cease operation for a period longer than 240 hours, unless:



- (i) the private club licensee notifies the department in writing at least seven days before the day on which the private club licensee closes or ceases operation; and
- (ii) the closure or cessation of operation is first approved by the department.
- (b) Notwithstanding Subsection (38)(a), in the case of emergency closure, the private club licensee shall immediately notify the department by telephone.
- (c) (i) The department may authorize a closure or cessation of operation for a period not to exceed 60 days.
- (ii) The department may extend the initial period an additional 30 days upon:
  - (A) written request of the private club; and
  - (B) a showing of good cause.
- (iii) A closure or cessation of operation may not exceed a total of 90 days without commission approval.
- (d) The notice required by Subsection (38)(a) shall include:
  - (i) the dates of closure or cessation of operation;
  - (ii) the reason for the closure or cessation of operation; and
  - (iii) the date on which the private club licensee will reopen or resume operation.
- (e) Failure of the private club licensee to provide notice and to obtain department authorization before closure or cessation of operation results in an automatic forfeiture of:
  - (i) the private club license; and
  - (ii) the unused portion of the private club license fee for the remainder of the license year effective immediately.
- (f) Failure of the private club licensee to reopen or resume operation by the approved date results in an automatic forfeiture of:
  - (i) the private club license; and
  - (ii) the unused portion of the private club license fee for the remainder of the license year.
- (39) A private club license may not be transferred from one location to another person, without prior written approval of the commission.
- (40) (a) A private club licensee, may not sell, transfer, assign, exchange, barter, give, or attempt in any way to dispose of the private club license to another person, whether for monetary gain or not.
- (b) A private club license has no monetary value for the purpose of any type of disposition.
- (41) A private club licensee or an employee of the private club licensee may not knowingly allow a person on the licensed premises to, in violation of Title 58, Chapter 37, Utah Controlled Substances Act, or Chapter 37a, Utah Drug Paraphernalia Act:
  - (a) sell, distribute, possess, or use a controlled substance, as defined in Section 58-37-2; or
  - (b) use, deliver, or possess with the intent to deliver drug paraphernalia, as defined in Section 58-37a-3.

## **TITLE 32A - ALCOHOLIC BEVERAGE CONTROL ACT** ***(Updated through May 2008)***

### **PART 6**

#### **ATTIRE, CONDUCT, AND ENTERTAINMENT ACT**

##### **32A-1-601. TITLE -- PURPOSE -- APPLICATION TO OTHER LAWS.**

- (1) This part is known as the "Attire, Conduct, and Entertainment Act."
- (2) This part establishes reasonable and uniform time, place, and manner of operation restrictions relating to attire, conduct, and sexually oriented entertainers on a premises or at an event at which alcoholic beverages are sold, served, or allowed to be consumed under a retail license or permit issued by the commission so as to:
  - (a) reduce the adverse secondary effects that the attire, conduct, and sexually oriented entertainers may have upon communities of this state; and
  - (b) protect the health, peace, safety, welfare, and morals of the residents of communities of this state.
- (3) Nothing in this part permits or allows the showing or display of any matter that is contrary to:
  - (a) applicable federal or state statutes prohibiting obscenity; or
  - (b) state statutes relating to lewdness or indecent public displays.
- (4) A local authority may be more restrictive of attire, conduct, or sexually oriented entertainers of the type prohibited in this part.

##### **32A-1-602. GENERAL RESTRICTIONS ON ATTIRE AND CONDUCT.**

The following attire and conduct on a premises or at an event regulated by the commission under this title are considered contrary to the public health, peace, safety, welfare, and morals, and are prohibited:

- (1) employing or using a person in the sale or service of alcoholic beverages while the person is in:

- (a) a state of nudity;
- (b) a state of seminudity; or
- (c) attire, costume, or clothing that exposes to view any portion of:
  - (i) the female breast below the top of the areola; or
  - (ii) the cleft of the buttocks;
- (2) employing or using the services of a person to mingle with patrons while the person is in:
  - (a) a state of nudity;
  - (b) a state of seminudity; or
  - (c) attire, costume, or clothing that exposes to view any portion of:
    - (i) the female breast below the top of the areola; or
    - (ii) the cleft of the buttocks;
- (3) encouraging or permitting a person to:
  - (a) engage in or simulate an act of:
    - (i) sexual intercourse;
    - (ii) masturbation;
    - (iii) sodomy;
    - (iv) bestiality;
    - (v) oral copulation;
    - (vi) flagellation; or
    - (vii) a sexual act that is prohibited by Utah law; or
  - (b) touch, caress, or fondle the breast, buttocks, anus, or genitals of any other person;
- (4) permitting a person to wear or use a device or covering that:
  - (a) is exposed to view; and
  - (b) simulates all or any portion of the human genitals, anus, pubic area, or female

breast;

- (5) permitting a person to use an artificial device or inanimate object to depict an act prohibited by this

section;

- (6) permitting a person to remain on a premises or at an event who exposes to public view any portion of that person's:

- (a) genitals, pubic area, or anus; or
- (b) in the case of a female, the areola and nipple of the breast; or
- (7) showing a film, still picture, electronic reproduction, or other visual reproduction depicting:
  - (a) an act or simulated act of:
    - (i) sexual intercourse;
    - (ii) masturbation;
    - (iii) sodomy;
    - (iv) bestiality;
    - (v) oral copulation;
    - (vi) flagellation; or
    - (vii) a sexual act that is prohibited by Utah law;
  - (b) a person being touched, caressed, or fondled on the breast, buttocks, anus, or

genitals;

- (c) a scene wherein an artificial device or inanimate object is employed to depict, or a drawing is employed to portray, an act prohibited by this section; or

- (d) a scene wherein a person displays the genitals or anus.

### **32A-1-603. Sexually oriented entertainer.**

(1) Subject to the restrictions of this section, live entertainment is permitted on a premises or at an event regulated by the commission.

(2) Notwithstanding Subsection (1), a licensee or permittee may not permit a person to:

- (a) appear or perform in a state of nudity;
- (b) perform or simulate an act of:
  - (i) sexual intercourse;
  - (ii) masturbation;
  - (iii) sodomy;
  - (iv) bestiality;
  - (v) oral copulation;
  - (vi) flagellation; or
  - (v) a sexual act that is prohibited by Utah law; or
- (c) touch, caress, or fondle the breast, buttocks, anus, or genitals.

- (3) A sexually oriented entertainer may perform in a state of seminudity:
  - (a) only in a tavern or class D private club; and
  - (b) only if:
    - (i) all windows, doors, and other apertures to the premises are darkened or otherwise constructed to prevent anyone outside the premises from seeing the performance; and
    - (ii) the outside entrance doors of the premises remain unlocked.
- (4) A sexually oriented entertainer may perform only upon a stage or in a designated performance area that is:
  - (a) approved by the commission in accordance with rules made by the commission in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
  - (b) configured so as to preclude a patron from:
    - (i) touching the sexually oriented entertainer; or
    - (ii) placing any money or object on or within the costume or the person of the sexually oriented entertainer; and
  - (c) configured so as to preclude the sexually oriented entertainer from touching a patron.
- (5) A sexually oriented entertainer may not touch a patron:
  - (a) during the sexually oriented entertainer's performance; or
  - (b) while the sexually oriented entertainer is dressed in performance attire or costume.
- (6) A sexually oriented entertainer, while in the portion of the premises used by patrons, must be dressed in opaque clothing which covers and conceals the sexually oriented entertainer's performance attire or costume from the top of the breast to the knee.
- (7) A patron may not be on the stage or in the performance area while a sexually oriented entertainer is appearing or performing on the stage or in the performance area.
- (8) A patron may not:
  - (a) touch a sexually oriented entertainer:
    - (i) during the sexually oriented entertainer's performance; or
    - (ii) while the sexually oriented entertainer is dressed in performance attire or costume; or
  - (b) place money or any other object on or within the costume or the person of the sexually oriented entertainer.
- (9) A minor may not be on a premises described in Subsection (3) when a sexually oriented entertainer is performing on the premises.
- (10) A person who appears or performs for the entertainment of patrons on a premises or at an event regulated by the commission that is not a tavern or class D private club:
  - (a) may not appear or perform in a state of nudity or a state of seminudity; and
  - (b) may appear or perform in opaque clothing that completely covers the person's genitals, pubic area, and anus if the covering:
    - (i) is not less than the following at its widest point:
      - (A) four inches coverage width in the front of the human body; and
      - (B) five inches coverage width in the back of the human body;
    - (ii) does not taper to less than one inch wide at the narrowest point; and
    - (iii) if covering a female, completely covers the breast below the top of the areola.

**32A-1-604. COMPLIANCE -- DISCIPLINARY PROCEEDING.**

- (1) Each person granted a license or permit by the commission to sell, serve, or allow consumption of alcoholic beverages on a premises or at an event and each officer, employee, or agent of the licensee or permittee shall comply with the conditions and requirements of this part.
- (2) Failure to comply with this part may result in a disciplinary proceeding pursuant to Section 32A-1-119 against:
  - (a) a licensee or permittee; and
  - (b) an officer, employee, or agent of the licensee or permittee.

## **R81. Alcoholic Beverage Control, Administration.**

### **R81-5. Private Clubs.**

#### **R81-5-1. Licensing.**

(1) Private club liquor licenses are issued to persons as defined in Section 32A-1-105(38). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-5-103 and 32A-5-107(44).

(2)(a) At the time the commission grants a private club license the commission must designate whether the private club qualifies to operate as a class A, B, C, or D private club based on criteria in 32A-5-101.

(b) After the license is granted, a private club may request that the commission approve a change in the club's classification in writing supported by evidence to establish that the club qualifies to operate under the new class designation based on the criteria in 32A-5-101.

(c) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(d) If the commission determines that the private club has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the commission shall approve the request.

(3)(a) A class C private club must operate as a dining club as defined in 32A-5-101(3)(c), and must maintain at least 50% of its total private club business from the sale of food, not including mix for alcoholic beverages, service charges, and membership fees.

(b) A class C private club shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(c) If any inspection or audit discloses that the sales of food are less than 50% for any quarterly period, an order to show cause shall be issued by the department to determine why the license should not be immediately reclassified by the commission as a class D private club. If the commission grants the order to show cause, the reclassification shall remain in effect until the licensee files a request for and receives approval from the commission to be classified as a class C private club. The request shall provide credible evidence to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed 50%.

#### **R81-5-2. Application.**

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a private club license when the requirements of Sections 32A-5-102, -103, and -106 have been met, a completed application has been received by the department, and the private club premises have been inspected by the department.

#### **R81-5-3. Bonds.**

No part of any corporate or cash bond required by Section 32A-5-106 may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

#### **R81-5-4. Insurance.**

Public liability and dram shop insurance coverage required in Subsections 32A-5-102(1)(i) and (j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

#### **R81-5-5. Advertising.**

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(18) that private clubs advertise in a manner that preserves the concept that private clubs are private and not open to the general public.

(3) Application of Rule.

(a) Any public advertising by a private club, its employees, agents, or members, or by any person under contract or agreement with the club shall clearly identify the club as being "a private club for members". In print media, this club identification information must be no smaller than 10 point bold type.

(b) A private club, its employees, agents, or members, or any person under a contract or agreement with the club may not directly or indirectly engage in or participate in any public advertising or promotional scheme that runs counter to the concept that clubs are private and not open to the general public such as:

- (i) offering or providing complimentary club memberships or visitor cards to the general public;
- (ii) offering or providing full or partial payment of membership fees or dues, or visitor card fees to members of the general public;
- (iii) offering or implying an entitlement to a club membership or visitor card to members of the general public; or
- (iv) offering to host members of the general public into the club.

#### **R81-5-6. Private Club Licensee Liquor Order and Return Procedures.**

The following procedures shall be followed when a private club liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

- (i) the bottle has not been opened;
- (ii) the seal remains intact;
- (iii) the label remains intact; and
- (iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

#### **R81-5-7. Private Club Licensee Operating Hours.**

Allowable hours of liquor sales shall be in accordance with Section 32A-5-107(28). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

#### **R81-5-8. Sale and Purchase of Alcoholic Beverages.**

(1) A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab.

(2) Liquor dispensing shall be in accordance with Section 32A-5-107; and Sections R81-1-9 (Liquor Dispensing Systems), R81-1-10 (Wine Dispensing), and R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

#### **R81-5-9. Liquor Storage.**

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the private club as approved by the department.

#### **R81-5-10. Alcoholic Product Flavoring.**

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the private club liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No club employee under the age of 21 years may handle alcoholic product flavorings.

#### **R81-5-11. Price Lists.**

*Proposed rule amendment (in italics) for **R81-5-11 (1) (Price Lists):***

*(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any amounts charged by the licensee for the service of packaged liquor, wine or heavy beer ~~[and shall be made a part of the house rules of the club, a copy of which]. A copy shall be kept on the club premises and available at all times for examination by the members, guests, and visitors to the club.~~*

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

(3) Customers shall be notified of the price charged for any packaged liquor, wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

#### **R81-5-12. Identification Badge.**

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

#### **R81-5-13. Brownbagging.**

When private social functions or privately hosted events, as defined in 32A-1-105(42), are held on the premises of a licensed private club, the proprietor may, in his or her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:

(1) When the entire club is closed to regular patrons for the private function or event, or

(2) When an entire room or area within the club such as a private banquet room is closed to regular patrons for the private function or event, and members of the private group are restricted to that area, and are not allowed to co-mingle with regular patrons of the club.

#### **R81-5-14. Membership Fees and Monthly Dues.**

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(1) through (7) that private clubs operate in a manner that preserves the concept that private clubs are private and not open to the general public.

(3) Application of Rule.

(a) Each private club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club. However, the application fees shall not be less than \$4, and the monthly dues may not be less than one dollar per month.

(b) A private club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

(c) Notwithstanding section (3)(b), if a private club is located within a hotel, the hotel may assist the club in the issuance of a club membership to a guest of the hotel under the following conditions:

- (i) the guest has booked a room and is staying at the hotel;
- (ii) the costs of the membership application fee and membership dues are paid for by the guest either as a separate charge, or as part of the hotel room rate;
- (iii) the private club receives payment of the fees and dues for all memberships issued to guests of the hotel;
- (iv) the hotel and the club shall maintain a current record of each membership issued to a guest of the hotel as required by the commission;
- (v) the records required by subsection (iv) shall be available for inspection by the department; and
- (vi) the issuance of the membership is done in accordance with the procedures outlined in 32A-5-107(1) through (4).

**R81-5-15. Minors in Lounge or Bar Areas.**

(1) Pursuant to 32A-5-107(8)(a)(iv), a minor may not be admitted into, use, or be on the premises of any lounge or bar area of any class A, B, C, or D of private club except when the minor is employed by the club to perform maintenance and cleaning services during hours when the club is not open for business.

(2) "Lounge or bar area" includes:

- (a) the bar structure as defined in 32A-1-105(5);
- (b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or
- (c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(3) A minor who is otherwise permitted to be on the premises of a class A, B or C private club may momentarily pass through the club's lounge or bar area en route to those areas of the club where the minor is permitted to be. However, no minor shall remain or be seated in the club's bar or lounge area.

**R81-5-16. Sexually Oriented Adult Entertainment or Businesses.**

(1) Pursuant to 32A-5-107(8)(a)(v), a minor may not be admitted into, use, or be on the premises of any private club that provides sexually oriented adult entertainment or operates as a sexually oriented business. This includes any club:

- (a) that is licensed by local authority as a sexually oriented business;
- (b) that allows any person on the premises to dance, model, or be or perform in a state of nudity or semi-nudity; or
- (c) that shows films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by their emphasis upon the exhibition or description of specified anatomical areas or specified sexual activities.

(2) "Nudity" or "state of nudity" means the showing of the human male or female genitals, pubic area, vulva, anus, or anal cleft with less than a fully opaque covering or the showing of the female breast with less than a fully opaque covering of any part of the nipple.

(3) "Semi-nudity" means a state of dress in which any opaque clothing covers the genitals, anus, anal cleft or cleavage, pubic area, and vulva narrower than four inches wide in the front and five inches wide in the back, and less than one inch wide at the narrowest point, and which covers the nipple and areola of the female breast narrower than a two inch radius.

(4) "Specified anatomical areas" means:

- (a) human male genitals in a state of sexual arousal; or
- (b) less than completely and opaquely covered buttocks, anus, anal cleft or cleavage, male or female genitals, or a female breast.

(5) "Specified sexual activities" means acts of, or simulating:

- (a) masturbation;
- (b) sexual intercourse;
- (c) sexual copulation with a person or a beast;
- (d) fellatio;
- (e) cunnilingus;
- (f) bestiality;
- (g) pederasty;

- (h) buggery;
- (i) sodomy;
- (j) excretory functions as part of or in connection with any of the activities set forth in (a) through (i).

**R81-5-17. Visitor Cards.**

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of 32A-5-107(1) through (7) that private clubs operate in a manner that preserves the concept that private clubs are private and not open to the general public.

(3) Application of Rule.

(a) A private club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to purchase or purchase in full or in part a visitor card for a member of the general public.

(b) Notwithstanding section (3)(a), if a private club is located within a hotel, the hotel may assist the club in the issuance of a visitor card to a guest of the hotel under the following conditions:

- (i) the guest has booked a room and is staying at the hotel;
- (ii) the cost of the visitor card is paid for by the guest either as a separate charge, or as part of the hotel room rate;
- (iii) the private club receives payment of the fees for all visitor cards issued to guests of the hotel;
- (iv) the hotel and the club shall maintain a current record of each visitor card issued to a guest of the hotel as required by the commission;
- (v) the records required by subsection (iv) shall be kept for a period of three years and shall be available for inspection by the department; and
- (vi) the issuance of the visitor card is done in accordance with the procedures outlined in 32A-5-107(6).

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: May 1, 2005**

**Notice of Continuation: September 7, 2006**

**Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)**



# TITLE 32A - ALCOHOLIC BEVERAGE CONTROL ACT

(Updated through May 2008)

## Chapter 14a - Alcoholic Beverage Liability

### 32A-14a-101. DEFINITIONS.

As used in this chapter:

(1) "DEATH OF A THIRD PERSON" includes recovery for all damages, special and general, resulting from such death, except punitive damages.

(2)(a) "INJURY" includes injury in person, property, or means of support.

(b) "INJURY" also includes recovery for intangibles such as mental and emotional injuries, loss of affection, and companionship.

### 32A-14a-102. Liability for injuries and damage resulting from distribution of alcoholic beverages -- Causes of action -- Statute of limitations -- Employee protections.

(1) (a) Except as provided in Section **32A-14a-103**, a person described in Subsection (1)(b) is liable for:

(i) any and all injury and damage, except punitive damages to:

(A) any third person; or

(B) the heir, as defined in Section **78B-3-105**, of that third person; or

(ii) for the death of a third person.

(b) A person is liable under Subsection (1)(a) if:

(i) the person directly gives, sells, or otherwise provides an alcoholic beverage:

(A) to a person described in Subsection (1)(b)(ii); and

(B) as part of the commercial sale, storage, service, manufacture, distribution, or consumption of alcoholic products;

(ii) those actions cause the intoxication of:

(A) any individual under the age of 21 years;

(B) any individual who is apparently under the influence of intoxicating alcoholic products or drugs;

(C) any individual whom the person furnishing the alcoholic beverage knew or should have known from the circumstances was under the influence of intoxicating alcoholic beverages or products or drugs; or

(D) any individual who is a known interdicted person; and

(iii) the injury or death described in Subsection (1)(a) results from the intoxication of the individual who is provided the alcoholic beverage.

(2) (a) A person 21 years of age or older who is described in Subsection (2)(b) is liable for:

(i) any and all injury and damage, except punitive damages to:

(A) any third person; or

(B) the heir, as defined in Section **78B-3-105**, of that third person; or

(ii) for the death of the third person.

(b) A person is liable under Subsection (2)(a) if:

(i) that person directly gives or otherwise provides an alcoholic beverage to an individual who the person knows or should have known is under the age of 21 years;

(ii) those actions caused the intoxication of the individual provided the alcoholic beverage;

(iii) the injury or death described in Subsection (2)(a) results from the intoxication of the individual who is provided the alcoholic beverage; and

(iv) the person is not liable under Subsection (1), because the person did not directly give or provide the alcoholic beverage as part of the commercial sale, storage, service, manufacture, distribution, or consumption of alcoholic products.

(3) Except for a violation of Subsection (2), an employer is liable for the actions of its employees in violation of this chapter.

(4) A person who suffers an injury under Subsection (1) or (2) has a cause of action against the person who provided the alcoholic beverage in violation of Subsection (1) or (2).

(5) If a person having rights or liabilities under this chapter dies, the rights or liabilities provided by this chapter survive to or against that person's estate.

(6) The total amount that may be awarded to any person pursuant to a cause of action for injury and damage under this chapter that arises after January 1, 1998, is limited to \$500,000 and the aggregate amount which may be awarded to all persons injured as a result of one occurrence is limited to \$1,000,000.

(7) An action based upon a cause of action under this chapter shall be commenced within two years after the date of the injury and damage.

(8) (a) Nothing in this chapter precludes any cause of action or additional recovery against the person causing the injury.

(b) Any cause of action or additional recovery against the person causing the injury and damage, which action is not brought under this chapter, is exempt from the damage cap in Subsection (6).

(c) Any cause of action brought under this chapter is exempt from Sections **78B-5-817** through **78B-5-823**.

(9) This section does not apply to a business licensed under Chapter 10, Part 1, General Provisions, to sell beer at retail only for off-premise consumption.

**32A-14a-103. EMPLOYEE PROTECTED IN EXERCISING JUDGMENT.**

(1) An employer may not sanction or terminate the employment of an employee of a restaurant, airport lounge, private club, on-premise beer retailer, or any other establishment serving alcoholic beverages as a result of the employee having exercised the employee's independent judgment to refuse to sell alcoholic beverages to any person the employee considers to meet one or more of the conditions described in Subsection 32A-14a-102(1).

(2) Any employer who terminates an employee or imposes sanctions on the employee contrary to this section is considered to have discriminated against that employee and is subject to the conditions and penalties set forth in Title 34A, Chapter 5, Utah Antidiscrimination Act.

**32A-14a-104. GOVERNMENTAL IMMUNITY.**

No provision of this title creates any civil liability on the part of the state or its agencies and employees, the commission, the department, or any political subdivision arising out of their activities in regulating, controlling, authorizing, or otherwise being involved in the sale or other distribution of alcoholic beverages.

**32A-14a-105. ACTION FOR CONTRIBUTION BY PROVIDER OF ALCOHOLIC BEVERAGES.**

(1)(a) Except as provided in Subsections (2) and (3), a person, as defined under Subsection 32A-14a-102(1), (2), or (3), against whom an award has been made under this chapter, may bring a separate cause of action for contribution against any person causing the injury and damage.

(b) The maximum amount for which any person causing the injury and damage may be liable to any person seeking contribution is that percentage or proportion of the damages equivalent to the percentage or proportion of fault attributed to that person causing the injury and damage.

(2) This action for contribution under this section may not be brought against:

(a) any person entitled to recovery as described in Subsection 32A-14a-102(1)(a)(i) or (ii); or

(b) any person entitled to recover as described in Subsection 32A-14a-102(2)(a)(i) or (ii).

(3) An action for contribution under this section may not diminish the amount of recovery for injury or damages awarded and received to any person entitled to recover as described in Subsection 32A-14a-102(1)(a)(i) or (ii) or 32A-14a-102(2)(a)(i) or (ii):

(a) in a cause of action brought under this chapter; or

(b) in a separate cause of action for injury and damage that is not brought under this chapter.

## **R81. Alcoholic Beverage Control, Administration.**

### **R81-1-9. Liquor Dispensing Systems.**

*Proposed rule amendments (in italics) for **R81-1-9 (Liquor Dispensing Systems):***

*A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.*

(1) *Minimum requirements. The department will only approve a dispensing system which:*

(a) *dispenses spirituous liquor in calibrated quantities not to exceed ~~[one ounce]~~ 1.5 ounces; and*

(b) *has a meter which counts the number of pours dispensed.*

*The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.*

(2) *Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.*

(3) *Method of approval.*

(a) *Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.*

(b) *Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the manufacturer's specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.*

(c) *Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.*

(4) *Operational restrictions.*

(a) *The system must be calibrated to pour a quantity of spirituous liquor not to exceed ~~[one ounce]~~ 1.5 ounces.*

(b) *Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.*

(c) *Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device. ~~[This rule does not prohibit the presence of opened containers of wine for use as provided by law.]~~*

(d) *The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.*

(e) *All dispensing systems and devices must*

(i) *avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;*

(ii) *not dispense from or utilize containers other than original liquor bottles; and*

(iii) *prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.*

(f) *Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR ~~[494]~~ 31.261 – 31.262 and 26 USC[A] Section 5301 and incorporates them by reference.*

(g) *Each licensee shall keep daily records for each dispensing outlet as follows:*

(i) *a list of the brands of liquor dispensed through the dispensing system;*

(ii) *~~[beginning and ending meter readings by brand or sales price level and]~~ the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;*

(iii) *number of portions of liquor sold ~~[by brand or sales price level]; and~~*

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances ~~[by brand or sales price level]~~.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than ~~[one ounce]~~ 1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both. No lists which are wall posted on the premises of a restaurant licensee may be smaller than 8 1/2 by 11 inches.

(j) A licensee or his employee shall not:

(i) sell or serve any brand of spirituous liquor not identical to that ordered by the patron; or

(ii) misrepresent the brand of any spirituous liquor contained in any drink sold or offered for sale.

(k) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

Proposed rule change: **Repeal R81-1-10 (Wine Dispensing) in its entirety.**

**~~[R81-1-10. Wine Dispensing.~~**

~~\_\_\_\_\_ (1) Each licensee shall keep daily records that compare the number of portions of wine by the glass dispensed to the number of portions sold. These records shall indicate:~~

~~\_\_\_\_\_ (a) the brands of each wine dispensed by the glass;~~

~~\_\_\_\_\_ (b) the portion size, not to exceed five ounces per portion, and the number of portions dispensed by the glass of each wine by brand and sales price level;~~

~~\_\_\_\_\_ (c) the portion size and number of portions sold by the glass of each wine by brand and sales price level; and~~

~~\_\_\_\_\_ (d) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.~~

~~\_\_\_\_\_ These records must be made available for inspection and audit by the department or law enforcement.]~~

## **TITLE 32A- ALCOHOLIC BEVERAGE CONTROL ACT**

### **32A-1-401. ALCOHOL TRAINING AND EDUCATION -- REVOCATION OR SUSPENSION OF LICENSES.**

(1) The commission may suspend, revoke, or not renew the license of any licensee if any of the following persons, as defined in Section 62A-15-401, fail to complete the seminar required in Section 62A-15-401:

- (a) a person who manages operations at the premises of the licensee;
- (b) a person who supervises the serving of alcoholic beverages to a customer for consumption on the premises of the licensee; or
- (c) a person who serves alcoholic beverages to a customer for consumption on the premises of the licensee.

(2) A city, town, or county in which an establishment conducts its business may suspend, revoke, or not renew the business license of the establishment if any person described in Subsection (1) fails to complete the seminar required in Section 62A-15-401.

## **R81. Alcoholic Beverage Control, Administration.**

### **R81-1-12. Alcohol Training and Education Seminar.**

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32A who:

- (a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;
- (b) is employed to manage or supervise the service of alcoholic beverages; or
- (c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

- (a) date of hire, and
- (b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

- (a) alcohol as a drug and its effect on the body and behavior;
- (b) recognizing the problem drinker;
- (c) an overview of state alcohol laws;
- (d) dealing with problem customers; and
- (e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

- (a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or
- (b) engage in any activity that would constitute managing operations at the premises of a licensee.



**U.S. DEPARTMENT OF THE TREASURY  
ALCOHOL AND TOBACCO TAX AND TRADE BUREAU**

**REMINDER**  
**Retailers Of Beverage Alcohol Products**

If you sell beverage alcohol as part of your business, you must pay an annual special occupational tax. Beverage alcohol means distilled spirits, wine, beer, mixed drinks, and beer or wine coolers. This tax applies to persons who sell on or off premises or who provide alcoholic beverages as part of the cost of an item or service. You may owe this tax even when you will not make a profit or when you are exempt from income tax.

Detailed information, forms, and taxpayer assistance, is available at web site of the ALCOHOL AND TOBACCO TAX AND TRADE BUREAU:  
<http://www.ttb.gov/alcohol/retailers/index.htm>

You must file and pay the special occupational tax on form ATF F 5630.5. You can print or download ATF Form 5630.5 or you can request a packet with the form and instructions by calling the Alcohol and Tobacco Tax and Trade Bureau's toll-free number at 800-937-8864 or local to 513-684-2979.

**(REVISED APRIL 22, 2005)**

**Suspension of Special Occupational Tax Payments**

Washington, D.C. - On October 22, 2004, H.R. 4520, the American Job Creations Act of 2004, was signed into law. As part of this act, the payment of Special Occupational Tax (SOT) will be suspended for certain businesses.

Although most taxpayers no longer will have to pay this tax during the suspension period, others will still be required to continue paying, and all taxpayers must still file the SOT Tax Return (TTB Form 5630.5) annually with the Alcohol and Tobacco Tax and Trade Bureau (TTB).

Currently, SOT is due by July 1 of every year for most businesses engaged in alcohol and tobacco industries at the manufacturing, wholesaling/importing, and retailing levels (tobacco retailers are not included).

With this new law, most SOT taxpayers will no longer be required to pay this tax for the period beginning July 1, 2005. The suspension of the SOT requirement will last three years and ends on June 30, 2008. No SOT is due for operations conducted between these dates.

Payment of SOT will no longer be required from producers, wholesalers, importers, and retailers of alcohol beverages, as well as manufacturers of non-beverage products.

SOT will remain due by Tax-Free Alcohol Users and Specially Denatured Alcohol Users and Dealers as well as Tobacco Products Manufacturers and Tobacco Export Warehouse Proprietors.

For all industry members, SOT remains due and payable for all persons in business and any new business until July 1, 2005. Any liabilities up until that date will still be due, even during the suspension period.

If you have questions regarding the suspension of SOT, please contact TTB's National Revenue Center at 1-(800) 937-8864 or (513) 684-2979.

## **R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.**

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32A-1-103 to regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32A-1-107 to prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32A-4-106(22), 32A-4-307(22), 32A-5-107(40), 32A-7-106(5), 32A-10-206(14), and 32A-10-306(5) that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to perform only upon a stage or in a designated area approved by the commission.

(2) Purpose. This rule:

(a) establishes reasonable and uniform guidelines governing the time, place and manner of operation of premises regulated by the commission that have sexually-oriented entertainers so as to reduce the adverse secondary effects that such premises have upon communities, and to protect the health, peace, safety, welfare, and morals of the residents of those communities;

(b) establishes guidelines used by the commission to approve stages or designated performance areas where sexually-oriented entertainers may perform;

(c) establishes guidelines for licensees and permittees to control the attire and conduct of sexually-oriented entertainers when the entertainers mingle with patrons or other persons in premises regulated by the commission; and

(d) shall be construed to protect the governmental interests identified by this rule in a manner consistent with protections provided by the constitutions of the United States and the state of Utah.

(3) Definitions.

(a) "Licensee" or "permittee" means a retailer authorized by the commission to sell, serve, and allow consumption of alcoholic beverages on its premises regardless of whether the retailer also holds a locally-issued sexually-oriented business license.

(b) "Semi-nude" means a state of dress in which opaque attire, costume, or clothing covers no more than the nipple and areola of the female breast and the male or female genitals, pubic area, and anus, which covering of the genitals, pubic area, and anus is no narrower than four inches (4") wide in the front, five inches (5") wide in the back, and does not taper to less than one inch (1") wide at the narrowest point.

(c) "Sexually-oriented entertainer" means any person who appears at or performs on behalf of or at the request of a licensee or permittee on a premises regulated by the commission on a contractual or voluntary basis, whether or not the person is designated an employee, independent contractor, agent, or otherwise of the licensee or permittee, for the entertainment of patrons, and who appears semi-nude.

(d) "Straddle dancing" means the use by any sexually-oriented entertainer of any part of his or her body to touch the genitals, pubic area, buttocks, anus or female breast of any other person. Conduct shall be "straddle dancing" regardless of whether the "touch" is direct or through attire, costume, or clothing. "Straddle dancing", shall include but not be limited to conduct commonly referred to by the terms "lap dancing", "table dancing", and "face dancing".

(4) Application of Rule.

(a) A licensee or permittee shall not allow:

(i) a sexually-oriented entertainer to appear or perform except on a stage or in a performance area that complies with this rule, and has been approved by the commission;

(ii) a sexually-oriented entertainer, while in the portion of the premises used by patrons, to be dressed in other than opaque clothing which covers and conceals the entertainer's performance attire or costume from the top of the breast to the knee;

(iii) a sexually-oriented entertainer to engage in straddle dancing with another person on the premises;

(iv) a sexually-oriented entertainer to touch a patron during the entertainer's performance, or while the entertainer is dressed in performance attire or costume;

(v) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area;

(vi) a patron to touch a sexually-oriented entertainer during the entertainer's performance, or while the entertainer is dressed in performance attire or costume; or

(vii) a patron to place money or any other object on or within the costume or the person of any sexually-oriented entertainer.

(b) Nothing herein precludes a local authority from being more restrictive with respect to attire and conduct of sexually-oriented entertainers in premises regulated by the commission.

(c) Stage requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or performance area where sexually-oriented entertainers perform:

(A) an applicant for a license or permit from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current licensee or permittee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current licensee or permittee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or ~~on~~ the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers or performers will perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.